

6/1/2021

Unofficial Transcript

Term Totals	ATTM: 0.0	PSSD: 0.0	GPTS: 0.0	GPA: 0.000
Cumulative Totals	ATTM: 14.0	PSSD: 14.0	GPTS: 44.8	GPA: 3.200

2020 Fall Semester

CONSUMER LAW CLINIC	LAW	597N	6.0	A-	22.2	
EVIDENCE	LAW	514	4.0	A-	14.8	
JURISPRUDENCE	LAW	568	2.0	A	8.0	
LAW REVIEW	LAW	598R	1.0	S	0.0	<u>SU</u>
Term Totals	ATTM: 12.0	PSSD: 12.0	GPTS: 45.0	GPA: 3.750		
Cumulative Totals	ATTM: 26.0	PSSD: 26.0	GPTS: 89.8	GPA: 3.454		

2021 Spring Semester

BUSINESS ASSOCIATIN	LAW	511	3.0	B	9.0	
TRADE SECRETS	LAW	5246	1.0	S	0.0	<u>SU</u>
COLLOQ: AI & LAW	LAW	5909	2.0	A	8.0	
ANTITRUST	LAW	521	3.0	B+	9.9	
INT'L TRADE & INVES	LAW	555	3.0	A	12.0	
LAW REVIEW	LAW	598R	1.0	S	0.0	<u>SU</u>
Term Totals	ATTM: 11.0	PSSD: 11.0	GPTS: 38.9	GPA: 3.536		
Cumulative Totals	ATTM: 37.0	PSSD: 37.0	GPTS: 128.7	GPA: 3.478		

INCOMPLETE GRADES:	0	UNITS:	0.0
NR GRADES:	0	UNITS:	0.0
P/NP GRADES:	0	UNITS:	0.0
S/U GRADES:	10	UNITS:	22.0
W GRADES:	0	UNITS:	0.0

GRADE UNITS ATTEMPTED	37.0	GRADE POINTS	128.7	UC GPA	3.478
TOTAL UNITS PASSED	37.0	UNITS COMPLETED	59.0		

***** THIS IS NOT AN OFFICIAL TRANSCRIPT *****

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Reference for Jesse Trujillo

Dear Judge Hanes:

I enthusiastically recommend Jesse Trujillo for a judicial clerkship in your chambers. Jesse has been an excellent student in two courses that I taught at the University of California, Irvine School of Law. In his first year of law school, Jesse was in my Common Law Analysis: Contract Law course. Jesse was always prepared and in command of the material. During our class sessions, in which I rely on volunteers, Jesse stood out as a conscientious and engaged student. His comments were thoughtful and always on point. I was always happy when he raised his hand because I knew that he would answer the question posed clearly and directly. In a very competitive class, Jesse earned an A-.

Given his strong performance in Contracts, I was pleased when Jesse enrolled in my Antitrust Law course during his second year of law school. Although Antitrust was taught via Zoom, Jesse continued to be an engaged student. When he spoke, he displayed both a solid understanding of judicial reasoning and an excellent intuition for why businesses behave as they do. I am confident that he would be able to master any area of law that he encounters during his clerkship.

Finally, Jesse is mature, polite, and unfailingly kind to all around him. I got to know Jesse during office hours and out-of-class events (before the pandemic) and I can attest that he is a great person with solid interpersonal skills. He is respected and liked by both his fellow students and members of the law faculty who have had the opportunity to work with him.

In sum, I am well-acquainted with Jesse's work and work ethic. I believe that he has the necessary qualities to be an asset to your chambers. If you have any questions, please feel free to contact me at (949) 824-5556 or cleslie@law.uci.edu.

Sincerely,

Christopher Leslie
Chancellor's Professor of Law

Christopher Leslie - cleslie@law.uci.edu - 949-824-5556



School of Law
UCI Law Clinics

June 21, 2021

RE: Jesse Trujillo

To Whom It May Concern:

I am writing this letter in support of Jesse Trujillo's application for a judicial clerkship. I first met Jesse as his direct supervisor in the Consumer Law Clinic at UC Irvine School of Law and was impressed with his work throughout the semester. His dedication and commitment to his clients allowed him to fully develop persuasive arguments in complex legal matters while also demonstrating creative problem solving to meet his client's goals.

As part of the Consumer Law Clinic, Jesse represented two older adults facing foreclosure after they were defrauded by a home improvement contractor and financing company. He zealously represented his client under intense time pressures to preserve the older adult's housing. In one case, he negotiated an "at risk" extension of her reverse mortgage, releasing her from an unaffordable repayment plan. In the other case, he helped advance his client's state court claims against the home improvement contractor, financing company, and authorizing municipality by developing and executing a discovery plan in support of his client's thirteen causes of action.

Jesse's writing skills were best demonstrated in the brief he wrote in opposition to summary judgment in a civil asset forfeiture. His research and oral argument helped to persuade the court that material facts were at issue requiring an evidentiary hearing.

But what was most impressive about Jesse's achievements was his ability to accomplish all of this with grace and empathy while facing a global pandemic. He is always mindful of the bigger context and the implications of the law. The quarantine did not deter him, instead he redoubled his efforts. I believe Jesse's excellent writing skills and tenacity would make him an excellent judicial clerk. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stacey L. Tutt".

Stacey L. Tutt
Director of the Consumer Law Clinic



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June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Jesse Trujillo's application for a clerkship

Dear Judge Hanes:

I give Mr. Jesse Trujillo my strongest recommendation to be selected for a judicial clerkship. Jesse is among the most interesting law students that I have taught. He received an A in both classes that he took with me: Jurisprudence, and International Trade and Investment Law. For these classes he received the Dean's Award. He also just won the Dean's Award in the class AI & the Law.

For each of these classes he wrote a paper. He is an excellent writer and sophisticated thinker, much more than most law students. It is what makes him special. Indeed, it was a pleasure to read his papers in these courses.

Jesse also cogently participated in my classes and was always incisive in his remarks. We talked after class, where he explored legal problems and responses to them with me.

Because of his performance and work ethic, I selected him to be my Research Assistant for this summer and next year. He has done an excellent and timely job for me. I believe that he has the qualities to be an outstanding judicial clerk.

Jesse has first-rate analytical skills. He is intellectually inquisitive, with a background in philosophy. His incisive thinking is attested by his receiving an A in classes requiring a written paper, and his selection to be on the UCI Law Review. It is why I chose him to be my Research Assistant.

Jesse also is thoughtful, engaging, mature, and highly responsible. He is an eager learner who does not hesitate to take the initiative. He stands out among his peers. He will pursue a career of excellence. I give him my strongest recommendation

Please do not hesitate to contact me if you have any questions. I can be reached by email at gshaffer@law.uci.edu or by phone at 949-824-0066. As for my background, I am Chancellor's Professor of Law at the University of California, Irvine School of Law, President-Elect of the American Society of International Law, and have published nine books and over one hundred articles.

Yours sincerely,

Gregory Shaffer
Chancellor's Professor of law

Gregory Shaffer - gshaffer@law.uci.edu - (949) 824-4794

Jesse B. Trujillo

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Writing Sample

As a summer associate at Geraci, LLP, I prepared the attached memorandum for the litigation department. The memorandum demurred to the various causes of action alleged against our client in a private lending dispute. To preserve client confidentiality, all individual names and locations have been changed, and some portions have been redacted (as indicated in brackets in the text). I have received permission from my employer to use this memorandum as a writing sample.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, (“Defendant”), is being sued for holding an interest in the allegedly forged Deed of Trust (“Deed of Trust”) recorded against Plaintiff, (“Plaintiff”), [] (“Property”). For the reasons set forth below, Defendant respectfully requests this Court sustain its demurrer to Plaintiff’s entire Complaint (“Complaint”) and the first, second, third, fourth, sixth, seventh, eighth, ninth, and tenth causes of action without leave to amend.

II. STATEMENT OF FACTS

Plaintiff is the owner of the real property located at []. (Complaint, p. 1, ¶2). On or around January 2021, an escrow was opened with Defendant Title Company (“Title Company”) for the financing of a loan secured by the Property in the amount of \$535,000.00 (the “Loan”). (Complaint, p. 3, ¶11). The Loan is secured by a Deed of Trust for the benefit of Defendant (“Defendant”) (the “Deed of Trust”). (Complaint, p. 3, ¶12). Plaintiff alleges that his signature on the Deed of Trust “is a forgery.” (Complaint, p. 3, ¶14). The Deed of Trust was notarized by Defendant Jones on or around January 25, 2021 (“Jones”). (Complaint, p. 3, ¶15). Plaintiff alleges Jones did not notarize his signature, but that an unknown individual impersonated him and signed the Deed of Trust. (Complaint, p. 3, ¶15). Plaintiff alleges that the Deed of Trust was recorded against the Property on or around February 1, 2021 and Defendant paid the sum of the Loan to Defendants DOES 1 through 100. (Complaint, p. 3-4, ¶16-17). Plaintiff further alleges that the individual assuming his identity conveyed a forged Grant Deed (the “Grant Deed”) to Defendant for consideration, which was notarized by Defendant Lee (“Lee”) and recorded on or around February 26, 2021. (Complaint, p. 4, ¶18). Plaintiff alleges he first discovered the forged Deed of Trust and Grant Deed in or around March 2021. (Complaint, p. 4, ¶19).

As will be shown below, each cause of action asserted by Plaintiff is, as a matter of law, without merit. Apart from the foregoing allegations, the Complaint is devoid of any factual allegations establishing fraud, negligence, or any wrongdoing on the part of Defendant. Plaintiff simply alleges conclusory and uncertain statements that Defendant committed fraud. As a result,

the Complaint fails to support any cause of action against Defendant and is defectively uncertain.

III. DEFENDANT'S DEMURRER SHOULD BE SUSTAINED

A. GOVERNING AUTHORITY FOR DEMURRER.

California Code of Civil Procedure § 430.10 provides, in pertinent part, as follows:

The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: ...*(e) The pleading does not state facts sufficient to constitute a cause of action. (f) The pleading is uncertain.* As used in this subdivision, "uncertain" included ambiguous and unintelligible.

California Code of Civil Procedure §430.30 also provides, in pertinent part, as follows:

(a) When any ground for objection to complaint, cross-complaint, or answer appears on the fact thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading.

In reviewing the sufficiency of a complaint against a demurrer, the Court is to treat the demurrer as admitting all material facts properly pled, **but not contentions, deductions, or conclusions of fact** or law. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A demurrer can be used to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. *Id.*; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. Further, a demurrer can be used where Plaintiff has included allegations that clearly disclose some defense or bar to recovery. *Crosstalk Productions, Inc. v. Jacobson* (1985) 65 Cal.App.4th 631, 635. A demurrer can be sustained based on admission or inconsistent statements made by the pleader in pleadings in a different lawsuit. *Cantu v. Resolution Trusts Corp* (1992) 4 Cal.App.4th 857, 877-78. In the instant case, Plaintiff fails to meet these standards, and thus Defendant's demurrer should be sustained without leave to amend.

B. PLAINTIFF'S FIRST CAUSE OF ACTION FOR SLANDER OF TITLE FAILS TO STATE A CERTAIN CAUSE OF ACTION.

To establish a cause of action for Slander of Title, Plaintiff must establish (a) a publication, (b) which is without privilege or justification and thus with malice, express or implied, and (c) is false, either knowingly so or made without regard to its truthfulness, and (d) causes direct and

1 immediate pecuniary loss. *Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263-264. In the
2 absence of an allegation of malice, the plaintiff does not state a cause of action for slander of title.
3 *Hill v. Alan* (1968) 259 Cal.App.2d 470, 490. California defines slander of title as an intentional
4 tort, the proof of which requires “the same test as that for scienter in the tort of deceit.” *Howard v.*
5 *Schaniel* (1980) 113 Cal.App.3d 256, 263-64. Malice exists where the person making the
6 statement acts out of hatred or ill will, or has no reasonable grounds for believing the statement to
7 be true, or makes the statement for any reason other than to protect the interest for the protection
8 of which the privilege is given. *Earp v. Nobmann* (1981) 122 Cal.App.3d 270, 285.

9 Plaintiff alleges that “Defendants, or some of them” knowingly recorded the forged Deed
10 of Trust and Grant Deed. (Complaint, p.5, ¶29). Plaintiff fails to allege Defendant acted out of
11 hatred or ill will. Plaintiff does not allege that Defendant knowingly recorded a forged Deed of
12 Trust. The Complaint fails to establish malice. Plaintiff alleges that Defendant received an interest
13 in Plaintiff’s Property based on a notarized request. (Complaint p.4 ¶18). That Defendant
14 benefitted from its role as lender, even if true, does not constitute malice. Thus, Plaintiff’s
15 Complaint fails to state a certain cause of action for Slander of Title.

16 **C. PLAINTIFF’S SECOND AND THIRD CAUSES OF ACTION FOR CANCELLATION OF**
17 **FORGED DEED OF TRUST AND FORGED GRANT DEED AND CANCELLATION OF**
18 **PROMISSORY NOTE FAIL TO STATE CERTAIN CAUSES OF ACTION.**

19 A demurrer to a complaint will be sustained if the pleading is uncertain and unintelligible.
20 *CCP §430.10(f)*. A complaint is uncertain, vague and ambiguous when, because of lack of clarity
21 in pleading or inconsistency of allegations, its meaning is doubtful as to the theory of liability,
22 basis of liability, or as to other material matters. *Crow v. Hildreth*, 39 Cal. 618, 620 (1870).

23 Here, Plaintiff fails to set forth a theory as to why Defendant is liable. Plaintiff merely
24 provides conclusory statements that Defendant is responsible for the allegedly forged Deed of
25 Trust. (Complaint, p.8, ¶49). Plaintiff’s Complaint completely fails to allege any act of
26 wrongdoing on the part of Defendant but attributes the allegedly wrongful acts of others to
27 Defendant. Thus, Plaintiff’s Complaint fails to state a certain cause of action for Cancellation of
28

1 Forged Deed of Trust and Forged Grant Deed and Cancellation of Promissory Note.

2 **D. PLAINTIFF’S FOURTH CAUSE OF ACTION FOR QUIET TITLE FAILS TO STATE A**
3 **CERTAIN CAUSE OF ACTION**

4 A quiet title action is an action to resolve competing claims to real or personal property.
5 *California Code of Civil Procedure* § 760.020(a). “A complaint to Quiet Title must be verified and
6 must include . . . the adverse claims as against which a determination is sought . . .” *Miller & Star*
7 §34:105. As with the claims for Cancellation of Forged Deed of Trust and Forged Grant Deed and
8 for Cancellation of Promissory Note above, Plaintiff fails to offer a theory of Defendant’s liability,
9 and therefore Plaintiff’s Complaint fails to state a certain cause of action for Quiet Title. As
10 explained above, Plaintiff fails to provide any factual allegations as to Defendant’s wrongdoing.
11 Plaintiff provides allegations of an unknown individual’s allegedly fraudulent actions and imputes
12 responsibility for these actions on Defendant without any factual support for doing so. Thus,
13 Plaintiff’s Complaint fails to state a certain cause of action for Quiet Title.

14 **E. PLAINTIFF’S SIXTH CAUSE OF ACTION FOR FRAUD AND CIVIL CONSPIRACY TO**
15 **COMMIT FRAUD FAILS TO STATE A CERTAIN CAUSE OF ACTION**

16 To allege a fraud claim, a plaintiff must plead the following elements: (1) misrepresentation
17 (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to
18 defraud; (4) justifiable reliance; and (5) resulting damage. *Engalla v. Permanente Med. Grp., Inc.*
19 (1997) 15 Cal. 4th 951, 974; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *Younan v.*
20 *Equifax Inc.* (1980) 111 Cal.App.3d 498, 512. Fraud allegations must be pled with particularity.
21 *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 240. The
22 facts constituting the fraud, including every element of the cause of action, must be alleged
23 “factually and specifically.” *Id.*

24 Plaintiff asserts only general and/or conclusory allegations in support of its cause of action
25 for fraud. Plaintiff alleges that “Defendants knowingly and willfully forged Plaintiff’s name and
26 obtained a loan using Plaintiff’s Property as security. . .” and “Defendants conspired and agreed
27 among themselves to commit such fraud.” (Complaint, p.10, ¶63). However, Plaintiff does not
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state with particularity what representation or nondisclosure was made, nor does he identify the specific circumstances surrounding the allegedly conspiracy to commit fraud. Plaintiff himself states, “Plaintiff is presently unable to state how, when and where each such conspiracy and agreement was entered into.” (Complaint p.3, ¶ 10). Plaintiff fails to state on what grounds his assertion of fraud rests. Plaintiff in no way provides material facts in support of such allegation that Defendant had knowledge or intent to defraud. These are entirely conclusory statements which do not rise to the level of particularity required for the claim of action of Fraud and Civil Conspiracy to Commit Fraud. Thus, Plaintiff’s Complaint fails to state a certain cause of action for fraud.

F. PLAINTIFF’S SEVENTH CAUSE OF ACTION FOR FINANCIAL ELDER ABUSE FAILS TO STATE A CERTAIN CAUSE OF ACTION

The elements of a claim of financial elder abuse, as detailed in *Cal. Welf. & Inst. Code* § 15610.30(a), are as follows:

(a) ‘Financial elder abuse of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 1575 of the Civil Code.

“A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.” *Cal. Welf. & Inst. Code* § 15610.30(b). As a statutory cause of action, a claim under the Elder Abuse Act must be alleged with particularity. *Delaney v. Baker* (1999) 20 Cal.4th 23, 32.

In *Stebly v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, the trial court sustained without leave to amend a demurrer to a complaint which asserted a claim for wrongful

1 foreclosure and a claim for elder abuse based on the foreclosure. *Id.* at p. 524–25. After affirming
2 the ruling with respect to the wrongful foreclosure claim, the appellate court held that the elder abuse
3 claim also failed because a lender does not engage in financial abuse of an elder by properly
4 exercising its rights under a contract, even though that conduct is financially disadvantageous to an
5 elder. *Id.* at p. 527–28.

6 Similarly, Plaintiff fails to allege in his Complaint that Defendant did anything other than
7 exercise its rights under a contract. Plaintiff has not provided any factual allegations to show that
8 Defendant acted with an intent to defraud or committed any knowingly fraudulent act. Plaintiff
9 provides no other material facts in support of its cause of action for financial elder abuse, failing to
10 meet the particularity requirement. Therefore, Plaintiff’s Complaint fails to state a certain cause of
11 action for financial elder abuse.

12 **G. PLAINTIFF’S EIGHTH CAUSE OF ACTION FOR NEGLIGENCE FAILS TO STATE A**
13 **CERTAIN CAUSE OF ACTION.**

14 To establish a cause of action for negligence, Plaintiff must prove four essential elements:
15 (1) the existence of a legal duty of care; (2) breach of that duty; and (3) proximate cause resulting
16 in (4) injury. *McIntyre v. Colonies-Pacific, LLC* (2014) 228 Cal.App.4th 664, 671 (citing
17 *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998).

18 Specifically for lenders, California Courts have determined there is no duty owed “to a
19 borrower when the involvement in the loan transaction does not exceed the scope of its
20 conventional role as a mere lender of money.” *Palestini v. Homecomings Financial, LLC* WL
21 3339459 (S.D.Cal. 2010) at *5 (citing *Nymark v. Heart Fed. Savings & Loan Ass’n* (1991) 231
22 Cal.App.3d 1089, 1096. Such a concept is grounded in the fact that a commercial lender is entitled
23 to pursue its own economic interest in a loan transaction, which is inconsistent with the
24 obligations of a fiduciary, who must knowingly subordinate his/her interest to act on behalf of and
25 for the benefit of another. *Software Design & App. Ltd. v. Hoelter & Arnett, Inc.*, 49 Cal.App.4th
26 472, 479.

27 Plaintiff alleges that Defendant’s recordation of the Deed of Trust was a breach of the duty
28

of care. (Complaint, p.13, ¶83). However, it is undisputed that lenders, such as Defendant, do not owe any fiduciary duties to the borrower, such as Plaintiff, given that lenders are entitled to act in their own self-interest. *See Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979–81; *Nymark v. Heart Fed. Savings & Loan Ass’n* (1991) 231 Cal.App.3d 1089, 1096. Since Defendant did not owe any fiduciary duty to Plaintiff there could not possibly have been a breach. As such, Plaintiff’s Complaint fails to state a certain cause of action for negligence.

H. PLAINTIFF’S NINTH CAUSE OF ACTION FOR PRELIMINARY AND PERMANENT INJUNCTION FAILS TO STATE A CERTAIN CAUSE OF ACTION

First, “[i]njunctive relief is a remedy and not, in itself, a cause of action....” *Shell v. Richter* (1942) 52 Cal.App.2d 164, 168. Second, Plaintiff has failed to plead the prima facie elements required to receive the requested injunctive relief. *California Code of Civil Procedures* § 526 states, in pertinent part, that:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

Injunctions are rarely granted where a suit for damages, such as this one, provides a clear remedy. [See *Thayer Plymouth Center, Inc. v. Chrysler Motors* (1967) 255 Cal.App.2d 300, 306 (finding that “if monetary damages afford adequate relief and are not extremely difficult to ascertain, an injunction cannot be granted.”)] [See also *Pacific Decision Sciences Corp. v. Sup. Ct.* (2004) 121 CA4th 1100, 1110 (determining that “before a court may issue a non-statutory injunction as a provisional remedy for breach of contract, it must appear that monetary relief

would not afford adequate relief or that it would be extremely difficult to ascertain the amount of damages.”)]

Moreover, in order to receive injunctive relief, Plaintiff must allege that the threat of “irreparable harm” must be *imminent* as opposed to a mere possibility of harm sometime in the future. “An injunction cannot issue in a vacuum based on the proponents’ fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity.” *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 CA4th 1069, 1084. As stated above, Plaintiff fails to allege any factual allegations against Defendant to support a claim for a preliminary and permanent injunction. Plaintiff fails to state the requisite elements of a cause of action for preliminary or permanent injunction.

I. PLAINTIFF’S TENTH CAUSE OF ACTION FOR DECLARATORY RELIEF FAILS TO STATE A CERTAIN CAUSE OF ACTION

The “fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.” *City of Cotati v. Cashman*, 29 Cal.4th 69, 79 (2002). Declaratory relief operates prospectively to declare future rights, rather than to redress past wrongs. *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909. Plaintiff must allege sufficient facts to establish the existence of an “actual controversy relating to the legal rights and duties of the respective clients.” *California Code of Civil Procedure* § 1060; *Winter v. Gnaizda*, 90 Cal.App.3d 750, 755 (1979). For all of the reasons stated above, Plaintiff fails to allege a controversy with specific particularity regarding Defendant, and therefore Plaintiff’s cause of action for declaratory relief fails to state a certain cause of action.

IV. CONCLUSION

For the reasons set forth above, Defendant respectfully request this Court sustain their demurrer to Plaintiff’s entire Complaint and its first, second, third, fourth, sixth, seventh, eighth, ninth, and tenth causes of action without leave to amend.

Applicant Details

First Name **Nathaniel**
 Middle Initial **T**
 Last Name **Vasquez**
 Citizenship Status **U. S. Citizen**
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Zip
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Contact Phone Number **7207884642**

Applicant Education

BA/BS From **George Mason University**
 Date of BA/BS **May 2017**
 JD/LLB From **University of Colorado School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=80601&yr=2011
 Date of JD/LLB **May 8, 2020**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **University of Colorado Law Review**
 Moot Court Experience **No**

Bar Admission

Admission(s) **Colorado**

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

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References

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Rebecca Almon (303-628-3606, ralmon@irelandstapleton.com)
Justice Monica Márquez (720-625-5450,
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Nathaniel Tyler Vasquez

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April 9, 2021

The Honorable Elizabeth W. Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr. U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

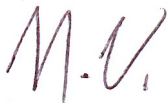
Dear Judge Hanes,

I am a graduate of the University of Colorado Law School and law clerk for the Honorable Anthony J. Navarro of the Colorado Court of Appeals. I am writing to apply for a law clerk position in your chambers for the 2022-2024 term. I would like to work for you for four reasons. First and foremost, I am looking for a lifelong mentor as I begin my legal career; someone who will always push me to find ways to improve. I have high expectations of myself, so I am confident I will meet your expectations and learn how to be a great attorney under your mentorship. Second, I am no stranger to Virginia. I grew up in Northern Virginia and would welcome the opportunity to return to the state to launch my career. Third, I welcome the opportunity unique to a federal magistrate clerkship to learn the ins and outs of federal civil litigation. In particular, I look forward to assisting in discovery and settlement conferences, as I anticipate that will be a significant aspect of my future career. Fourth and relatedly, as I hope to be a commercial litigator at a firm after clerking, I believe the fast-paced work environment of federal district court will serve me well in my future career—and be an invaluable asset to your chambers given that I function best in such circumstances.

If given this opportunity, I believe my experience, my strong work ethic, and my intellectual curiosity will contribute positively to your chambers. Both as a summer associate at large firm in Denver and certainly as an appellate law clerk, I have developed an ability to manage a large workload efficiently and effectively. Further, as an Articles Editor and board member of the *University of Colorado Law Review*, I fostered an intellectual curiosity that inspires me to seek out complex and often novel questions of law. Most importantly, I would bring a cheerful and hardworking attitude. Coming from a career in the arts, law school, and a clerkship, I have learned how to handle stress while remaining positive. I have also learned the value of being flexible and adapting to a given work environment. I am not someone who feels bound to the traditional 9-to-5 workday and I can therefore easily adjust my own schedule to fit the court's needs. Ultimately, my goal is to continue learning and it would be an honor to have the opportunity to do so in your chambers.

Enclosed you will find the requisite application materials. I would also encourage you to reach out to the following individuals who can speak to my abilities: Judge Anthony Navarro (anthony.navarro@judicial.state.co.us); Rebecca Almon, partner at Ireland Stapleton (ralmon@irelandstapleton.com); and Justice Monica Márquez of the Colorado Supreme Court (monica.marquez@judicial.state.co.us). Thank you for your time and consideration.

Sincerely,



Nathaniel Vasquez

Nathaniel Tyler Vasquez

13780 Del Corso Way Apt.#1224 Broomfield, CO 80020
(720) 788-4642 • nathaniel.vasquez@judicial.state.co.us

EDUCATION

University of Colorado Law School

Boulder, CO

Juris Doctor, cum laude

May 2020

- GPA: 3.662, Rank 31/180 (Top 20%), Fall 2018 and Fall 2019 Dean's List
- Articles Editor and Board Member, *University of Colorado Law Review*, Volume 91
- Memberships and Public Service: OUTLaw, LGBT Bar Association, Korey Wise Innocence Project

George Mason University

Fairfax, VA

Bachelor of Fine Arts, magna cum laude, Theatre Performance

January 2014 — May 2017

- GPA: 3.83 (Top 10%)

BAR ADMISSIONS and PROFESSIONAL EXPERIENCE

Bar Admissions: Colorado

Colorado Court of Appeals

Denver, CO

Law Clerk—The Hon. Anthony J. Navarro

September 2020 — September 2022

- Research and draft bench memoranda on issues presented in pending cases.
- Assist Judge Navarro in drafting opinions and contribute to court hiring and pipeline subcommittees.
- Run chamber's administrative tasks, bailiff during oral arguments, and mentor judicial interns.

University of Colorado Law School Appellate Advocacy Practicum

Boulder, CO

Student Attorney

November 2019 — April 2020

- Represented an incarcerated, indigent client on a factually and procedurally complex appeal of Section 1983 and ADA Title II claims before the Tenth Circuit Court of Appeals.
- Gained experience with appellate litigation and research, particularly how to comb through a 2500-page lower court record and how to interview and interact with clients.

Colorado Attorney General's Office—Criminal Appeals Division

Denver, CO

Summer Internship

May 2019 — July 2019

- Research and authored appellate briefs for submission to the Colorado Court of Appeals and prepared assistant attorneys general for oral argument.

Colorado Supreme Court

Denver, CO

Judicial Internship—The Hon. Monica M. Márquez

January 2019 — April 2019

- Authored memoranda on petitions for certiorari covering a wide range of topics, including criminal procedure, governmental immunity, and real property disputes.
- Observed oral argument and authored a bench memorandum recommending resolution of an issue of first impression pending before the court.

Ireland Stapleton Pryor & Pascoe, PC

Denver, CO

Summer Associate

June 2018 — August 2018

- Conducted legal research and drafted legal memoranda and motions involving the following practice areas: environmental/regulatory, business, employment, real estate, and special districts.
- Attended and observed trial proceedings, depositions, and client meetings.

PUBLICATIONS

Comment, *An Old View of the Cathedral: Intellectual Property Under the Colorado Uniform Partnership Act*, 91 U. COLO. L. REV. 1287 (2020).

University of Colorado School of Law Student Transcript

Printed: 06/02/2020

Student: Vasquez, Nathaniel T.

Id Number: 108742876

Page: 1

Rank: 31 / 177 AS OF 05/29/2020

Transcript Notes:

Term: Fall 2017 Year: 2017

Course #	Course Title				Instructor		Units	Grade	Pass	Points	
LAW 5121	CONTRACTS				Loewenstein		4.0	B+ 3.3		13.2	
LAW 5205	LEGIS & REGULATION				Squillace		3.0	B+ 3.3		9.9	
LAW 5226	LEGAL WRITING I				Stafford		2.0	B+ 3.3		6.6	
LAW 5303	CIVIL PROCEDURE				Mueller		4.0	A- 3.7		14.8	
LAW 5425	TORTS				Norton		3.0	A- 3.7		11.1	
Totals -->											
Hrs.		Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Num.	Num.	Let.	Let.
Tran		Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.	Pts.
Sem								16.0	16.0	55	3.47
Cum								16.0	16.0	55	3.47

Term: Spring 2018 Year: 2018

Notes:

Course #	Course Title		Instructor		Units	Grade	Pass	Points		
LAW 5223	LEGAL WRITING II		Stafford		2.0	B+ 3.3		6.6		
LAW 5503	CRIMINAL LAW		White		4.0	A- 3.7		14.8		
LAW 5624	PROPERTY		Konnoth		4.0	A- 3.7		14.8		
LAW 5646	FOUN OF LEGAL RES		Harrell		1.0		P			
LAW 6005	CONSTITUTIONAL LAW		Skinner-Thom		4.0	A- 3.7		14.8		
Totals -->Hrs. Hrs. Hrs. Hrs. Hrs. Hrs. Hrs. Num. Num. Let. Let.										
	Tran	Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.
Sem						1.0	15.0	14.0	51	3.64
Cum						1.0	31.0	30.0	106	3.55

Term: Fall 2018 Year: 2018

Notes:

Course #	Course Title	Instructor	Units	Grade	Pass	Points
LAW 6353	EVIDENCE	Mueller	3.0	A 4.0		12.0
LAW 6511	LABOR LAW	White	3.0	A- 3.7		11.1
LAW 7025	CIVIL RIGHTS	Skinner-Thom	3.0	A- 3.7		11.1
LAW 7045	CRIM PRO ADJ	Levin	3.0	A 4.0		12.0
LAW 7896	JOURNAL-LAW REVIEW	Bloom	1.0		P	
LAW 7939	EXTERN PROGRAM	McKee	3.0		P	

Notes: Dean's List Fall 2018

Totals -->												
Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Num.	Num.	Let.	Let.	
Tran	Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.	Pts.	Avg.	
Sem					4.0	16.0	12.0			46	3.85	
Cum					5.0	47.0	42.0			152	3.63	

Term: Spring 2019 Year: 2019

Notes:

Course #	Course Title		Instructor		Units	Grade	Pass	Points				
LAW 6007	INCOME TAX		Speck		4.0	A- 3.7		14.8				
LAW 6045	CRIM PROCEDURE		Gruber		3.0	B+ 3.3		9.9				
LAW 6055	POST CONV CRIM PRO		Martinez		3.0	A 4.0		12.0				
LAW 6104	WILLS & TRUSTS		Brantz		3.0	B+ 3.3		9.9				
LAW 7896	JOURNAL-LAW REVIEW		Bloom		1.0		P					
Totals -->Hrs. Hrs. Hrs. Hrs. Hrs. Hrs. Hrs. Hrs. Num. Num. Let. Let.												
			Tran	Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.
Sem								1.0	14.0	13.0	46	3.58
Cum								6.0	61.0	55.0	199	3.62

Term: Fall 2019 Year: 2019

Course #	Course Title	Instructor	Units	Grade	Pass	Points
LAW 6103	LEGAL ETHICS PROF	Hart	3.0	A- 3.7		11.1
LAW 6211	CORPORATIONS	Schwartz	3.0	A- 3.7		11.1
LAW 7065	IMMIGRAT & CITZN LAW	Chen	3.0	A- 3.7		11.1
LAW 7106	MOOT COURT COMP	Horowitz	1.0		P	
LAW 7725	AMER INDIAN LAW	Krakoff	3.0	A 4.0		12.0
LAW 7906	JOURNAL- LAW	Bloom	2.0		P	
LAW 8548	SEM: THEORY OF	Campos	2.0	A 4.0		8.0

Notes: Dean's List Fall 2019

Totals -->												
Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Num.	Num.	Let.	Let.	
Tran	Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.	Pts.	Avg.	
Sem					3.0	17.0	14.0			53	3.80	
Cum					9.0	78.0	69.0			252	3.66	

Term: Spring 2020 Year: 2020

Notes: Most Law classes graded Credit/No Credit due to COVID-19

Course #	Course Title	Instructor	Units	Grade	Pass	Points
LAW 7003	FEDERAL COURTS	Bloom	3.0		CR	
LAW 7015	FIRST AMENDMENT	Norton	3.0		CR	
LAW 7029	APP ADVCY PRCTCM	Cushing	3.0		CR	
LAW 7401	SECURITIES REG	Gerding	3.0		CR	
LAW 7906	JOURNAL-LAW REVIEW	Bloom	2.0		CR	

Notes:

Totals -->												
Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Hrs.	Num.	Num.	Let.	Let.	
Tran	Pend	N/L	Clin	Fail	Pass	Grad	Avg.	Pts.	Avg.	Pts.	Avg.	
Sem			14.0			14.0				0	0.00	
Cum			14.0		9.0	92.0	69.0			252	3.66	

DEGREE JURIS DOCTOR

CONFERRED May 7, 2020

I certify this to be the School of Law transcript on file in the Registrar's Office at the School of Law, University of Colorado, Boulder. This is not an official University of Colorado transcript. NOT VALID WITHOUT SCHOOL OF LAW SEAL.

Shannon Foley

Shannon Foley, Law Registrar

June 2, 2020



April 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to offer my enthusiastic support for Nathaniel "Nathan" Vasquez, who is applying for a position as a law clerk in your chambers. Nathan is a recent graduate of Colorado Law School, where he was an outstanding member of the upper-level Criminal Procedure course that I teach. I think that Nathan would make an excellent law clerk, and I recommend him for the position with great enthusiasm and without any reservation.

In class, Nathan always was a thoughtful and a vocal contributor. When called on, he displayed great comfort with even the trickiest of constitutional doctrine and showed tremendous poise in considering both sides of every issue. When he volunteered it was never to show off; instead, he consistently helped highlight important points or bring nuance to our conversations.

Additionally, in a class where we often considered issues of policy and institutional design (e.g., How should prosecutors make charging decisions? In what ways might the criminal justice system be more responsive to public opinion? How should courts address attorney misconduct?), Nathan displayed a real knack for thinking critically about the big picture. Where many of his classmates often came to discussions with a clear preference in favor of the prosecution or the defense and let those preferences color their arguments, Nathan displayed an admirable commitment to "getting it right." As a former law clerk myself (at the federal trial and appellate levels), I know how important it is to be able to see both sides of every case. I have no doubt that Nathan would bring his fair and evenhanded approach to any case in your chambers.

Beyond Nathan's performance in class, his exam was one of the strongest in the class, displaying a clear mastery of the material, as well as strong writing and analytical abilities. In my two years of teaching at Colorado Law, I would rank Nathan's exam and performance in class as among the strongest. Additionally, before joining the faculty at CU, I spent three years teaching at Harvard Law School. I am confident that Nathan would be right at home among my strongest Harvard students. His quick intellect and careful approach would stand out in any group of law students or attorneys.

Last, but certainly not least, I should note that Nathan is not just a talented law student. He is also very personable, a great conversationalist, and quite humble, despite his many accomplishments. I always enjoy his visits to my office. Whether we wind up discussing cutting edge issues in civil rights litigation, major criminal cases in the news, or new Supreme Court decisions, Nathan is always engaged, thoughtful, and intellectually curious. I am sure that he would bring this same upbeat demeanor and positive attitude to your chambers.

For all of these reasons, I think that Nathan would be a wonderful addition to your chambers, and I recommend him with great enthusiasm. If you have any further questions, or if there is any further way in which I can assist in Nathan's candidacy, please don't hesitate to call me at (303) 735-5981 (office) or (202) 256-2654 (cell).

Sincerely,

Benjamin Levin

Benjamin Levin - ben.levin@colorado.edu - (303) 735-5981



**TWENTIETH JUDICIAL DISTRICT
BOULDER COUNTY
PO BOX 4249
BOULDER, COLORADO 80306-4249
303.441.4921**

Hon. Elizabeth H. M. Brodsky
1777 6th Street
Boulder, Colorado 80302
303-441-3723

April 8, 2021

The Honorable Elizabeth W. Hanes
United States District Court
Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Magistrate Judge Hanes:

I had the distinct pleasure of working with Mr. Nathaniel Vasquez when he served as a County Court Extern in the Fall of 2018. When Mr. Vasquez applied for the position, I was immediately impressed with his calm, self-assured presence, his thoughtful responses to my questions, his obvious intellect and his sense of humor. His service as a County Court Extern confirmed those qualities and strengths – as well as many others. Mr. Vasquez is extremely conscientious, he is a very quick study, and he takes a steady, common sense approach to addressing legal matters and solving problems. He utilizes both his keen intellect and his empathy to arrive at fair solutions to incredibly challenging problems.

Mr. Vasquez was fearless in his willingness to take on any project – no matter how large or small – and he demonstrated an ability to be both self-directed and to seek guidance when necessary. Mr. Vasquez researched legal issues and wrote draft orders for four judges with mixed criminal and civil dockets. He required very little supervision, I trusted him to seek my guidance when necessary, and his work product was uniformly excellent.

Over the course of my career, I have had the opportunity to supervise countless attorneys and law students. Mr. Vasquez stands out for his intelligence, tremendous work ethic, professionalism, calm demeanor and his legal research and writing skills.

I wholeheartedly recommend Mr. Vasquez for a clerkship position. I am certain he would be a valued member of any judicial team. Please feel free to contact me at 303-441-3767, or elizabeth.brodsky@judicial.state.co.us if you would like further information.

Sincerely,

Elizabeth Brodsky
County Court Judge
20th Judicial District

April 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to provide you with an enthusiastic reference for my former student, Nathaniel Vasquez, who is applying to serve as a law clerk in your chambers. Mr. Vasquez was a student in my Securities Regulation class in the Spring 2020 semester. He has the lawyerly qualities that would serve any judge well. He demonstrated in my course a careful and probing analysis of intricate statutes and regulations, an impressive understanding of the complex facts and legal rules in voluminous case law, and an ability to learn and synthesize daunting concepts, including in areas outside of blackletter law (such as, in my course, financial economics, corporate finance, and accounting).

Mr. Vasquez displayed these talents in the middle of one of the strangest and most difficult semesters I have seen in my teaching career. The move to remote learning during quarantine disrupted the course, and I chose to give the students the option to work on a group project in lieu of the traditional final exam. Nathaniel chose to work on the project and took the lead on researching and writing a difficult section on state securities ("blue sky") laws that small businesses seeking to raise emergency capital must navigate. His work provided a valuable public service for small businesses that are struggling mightily in the current health and economic crisis. Mr. Vasquez did a masterful job and carefully mapped out a maze of rules and exemptions in lucid and accessible prose. Nathaniel was able to distill complex law into easy to understand language without "dumbing down," oversimplifying, or papering over areas of vagueness, ambiguity, or uncertainty. Had my University not moved to "credit/no credit" grading, Nathaniel would have earned an "A." I pride myself on Securities Regulation being one of the most difficult courses at the University of Colorado Law School and on being a tough grader and judge of talent.

Throughout this project and a stressful semester, Mr. Vasquez also displayed personal qualities that would be highly valued in judicial chambers. He worked gracefully under fluid and stressful circumstances. Mr. Vasquez threaded the needle between showing great initiative and asking considerate follow-up questions, and he collaborated well with other students on the project. At all times, he demonstrated immense good humor. I practiced law for a long time before joining the academy, which I believe gives me additional insight into the makings a great young lawyer. Mr. Vasquez is the type of lawyer with whom I would want to work late at night on a challenging project. He is one of the very few students I would hire in a heartbeat.

Mr. Vasquez has been an exceptional student outside my classroom. I understand from speaking with other faculty that he earned their respect with his too rare combination of academic prowess, humility, and good nature. He has been a vital contributor to the University of Colorado Law Review. His student law review note on the treatment of intellectual property under Colorado's partnership statute was at once creative, meticulous, and well argued. Outside of the law school, he has accumulated significant experience as an intern and extern for a number of judicial, public sector, and law firm employers whom I respect immensely.

Best regards,

Erik F. Gerding
Professor of Law & Wolf-Nichol Fellow

Erik Gerding - Erik.Gerding@colorado.edu - 303-492-4899

Nathaniel Tyler Vasquez

13780 Del Corso Way Apt.#1224 Broomfield, CO 80020
(720) 788-4642 • nathaniel.vasquez@judicial.state.co.us

Writing Sample Cover Sheet

Type: State Appellate Brief (short excerpt from the Argument section)

Description: The full version of this brief was prepared as part of an assignment for the Criminal Appeals division of the Colorado Attorney General's Office. This Answer Brief was filed in the case *People v. Lucas*, 17CA1907. The brief was prepared under the supervision of Assistant Attorney General Frank Lawson. The issue on appeal was whether the trial court erred in denying defendant's motion to suppress based on officers' failure to give *Miranda* warnings. The People's position was that defendant was not in custody for *Miranda* purposes, and thus no warnings were required.

The full version filed with the Colorado Court of Appeals departs from this excerpt mainly in terms of formatting. The excerpt below represents the first draft of the Argument section before it received light editing and feedback from Frank Lawson. It is therefore my own work.

ARGUMENT

I. Defendant was not in custody when he made the statements to police.

Defendant claims that the trial court committed reversible error by failing to suppress statements he made to police in the parking lot of the K.S.'s apartment complex. Because the statements were not procured through a custodial interrogation (specifically, defendant was not in custody), he is incorrect.

A. Preservation and Standard of Review

The People agree that defendant's contentions were preserved. CF, pp 72-73; TR 6/2/17, pp 17-62.

The People also agree that a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *People v. Zamora*, 220 P.3d 996, 998 (Colo. App. 2009). Appellate court defers to the trial court's factual findings if supported by competent evidence in the record, but review the trial court's legal conclusions de novo. *Id.*

Should this Court find error, reversal is subject to constitutional harmless error review. *Bartley v. People*, 817 P.2d 1029, 1034 (Colo. 1991).

B. Additional Background

At around 8:00 PM on December 14, 2016, Agents Crewes and Saunders responded to a civil assist dispatch call in a Home Depot parking lot. TR 7/17/17, p 191:9–16. There, they spoke with K.S., who conveyed her version of the December 7 domestic violence incident, then expressed concern that defendant was waiting outside of her apartment. *Id.* The officers subsequently drove to the apartment complex, with no sirens or emergency lights, to determine what defendant was doing. Tr 6/2/17, p 23:12–14.

The officers encountered defendant at 8 o'clock in the evening in the public parking lot of K.S.'s apartment complex. TR 6/2/17, p 24:5–22. Defendant then approached the officers and initiated the encounter for the express purpose of explaining his side of the story. TR 6/2/17, p 61:15–17. While the night was cold, defendant was dressed for the weather and was allowed to keep his hands in his pockets during the encounter. TR 6/2/17, p 34–5. The only persons present were the two agents and defendant. TR 6/2/17, p 61:19–20.

The agents asked a grand total of three questions: are you Trenton Lucas; what are you doing at [K.S.'s residence]; and did you strangle

K.S. TR 6/2/17, pp 24:21–22, 26:16–17, 30:19–20. The third question was prompted by defendant’s narrative response to the second question. TR 6/2/17, p 29–30. Otherwise, the trial court found that the encounter consisted primarily of defendant’s free narrative about the incident on December 7. TR 6/2/17, p 59:2–5. The trial court also found that the tone was conversational, nonthreatening, and that the agents’ demeanor was professional and courteous. TR 6/2/17, p 61:19–23. The conversation was short—roughly 20 minutes—and again was determined to be conversational. TR 6/2/17, pp 51:17–20, 61:19–23.

The only restrictions of defendant’s movement occurred when he was patted down for weapons and was then asked to sit on a curb. TR 6/2/17, pp 58:1–4, 62:1–4. The trial court explicitly found that the pat down was conducted for officer safety reasons given that the officers observed a pocket knife on his person. TR 6/2/17, p 58:3–6. The only direction given to the defendant was for him to lace his hands behind his head while he was being patted down. TR 6/2/17, p 39:8–13. Defendant complied with this direction without protest, and when the pat-down was over, the officers stepped back and the conversation resumed. TR 6/2/17, p 39:9–13.

C. Relevant Legal Principles

Miranda prohibits the prosecution from introducing any statement procured by custodial interrogation unless the police precede their interrogation with certain warnings. *People v. Matheny*, 46 P.3d 453, 462 (Colo. 2002) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). Of course, *Miranda*'s prophylactic protections apply only where "a suspect is subject to both custody and interrogation." *Effland v. People*, 240 P.3d 868, 873 (Colo. 2010).

The fundamental inquiry in determining whether a suspect is "in custody" is "whether a reasonable person in the [defendant's] position would believe himself to be deprived of his freedom of action to the degree associated with a formal arrest." *Mumford v. People*, 270 P.3d 953, 957 (Colo. 2012) (quoting *People v. Hankins*, 201 P.3d 1215, 1218 (Colo. 2011)). Stated slightly differently, *Miranda* rights are only implicated when police detain a suspect using a degree of force traditionally associated with concepts of "custody" and "arrest," as opposed to that associated with a brief *Terry* stop. *People v. Polander*, 41 P.3d 698, 705 (Colo. 2001).

In making a custody determination, a court must consider the totality of the circumstances under which police conducted the interrogation. *Id.* A non-exhaustive list of factors courts consider in determining whether an interrogation was custodial include:

- (1) the time, place, and purpose of the encounter;
- (2) the persons present during the interrogation;
- (3) the words spoken by the officer to the defendant; (4) the officer's tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; (7) the officer's response to any questions asked by the defendant; (8) whether directions were given to the defendant during the interrogation; and (9) the defendant's verbal or nonverbal response to such directions.

Matheny, 46 P.3d at 465–66 (quoting *People v. Trujillo*, 938 P.2d 117, 124 (Colo. 1997)).

D. Analysis

Defendant argues that he was in custody for *Miranda* purposes because (1) he was subjected to a pat-down for a pocket knife that officers observed on his person, (2) he was asked to sit on the curb while talking with the officers, and (3) he was not informed that he was free to leave. Defendant is incorrect.

In determining that defendant was not in custody, the trial court relied on the *Matheny* factors as applied in *People v. Begay*, 325 P.3d 1026 (Colo. 2014. TR 6/2/17, p 61:8–10. In *Begay*, police were searching for an assailant who went by the name “Rabbit.” 325 P.3d at 1028. At 11 o’clock at night on a lighted creek path, the officers noticed a man matching Rabbit’s description. *Id.* Upon calling out “Hey Rabbit,” *Begay* approached the officers “in a friendly manner and ‘almost hugged him as if he knew him.’” *Id.* (Emphasis added). *Begay* was asked to sit on the curb, which he then did without protest. *Id.* The officers then asked an open-ended question about the assault, upon which *Begay* launched into a free narrative that resulted in inculpatory statements. *Id.* at 1029. At no point was *Begay* handcuffed, patted-down, told he was under arrest, nor that he was not free to leave. *Id.* The *Begay* court noted that the officers initiated the conversation and that *Begay* was seated on a curb the whole time. *Id.* at 1031. However, in determining that *Begay* was not in custody for *Miranda* purposes, the court emphasized (1) that *Begay* approached the officers in a friendly manner upon being called out to, and (2) *Begay* was *asked*—not directed—to sit down on a curb. *Id.* Under the totality of the

circumstances, the court ruled, a reasonable person in *Begay*'s position would not consider himself deprived of his freedom of movement to a degree associated with a formal arrest. *Id.* at 1032.

In this case, unlike in *Begay*, defendant was the one who approached the officers, not the other way around. TR 6/2/17, p 57:17–22; TR 7/18/17, p 71:2–4. The officers were on their way back to their patrol cars when defendant approached them saying “I need to talk to you guys.” TR 6/2/17, p 61:17. Based on the officers’ testimony to this effect, the trial court concluded not only that defendant’s statements were made in a conversational setting, but that they were (1) voluntary and (2) initiated by the defendant himself for the purpose of explaining his perception of the incident on December 7. TR 6/2/17, p 60–61; TR 7/18/19, p 130:5–6. Further, like in *Begay*, defendant was asked—not directed—to sit on the curb. TR 6/2/17, p 62:1–4. Though defendant’s movement was curtailed by sitting on the curb, “an officer’s direction to stay put does not always equal restraint on a defendant’s freedom of action to the degree associated with a formal arrest.” *Begay*, 325 P.3d at 1031; *see also Mumford*, 270 P.3d at 955 (holding that defendant was

not in custody after officers patted him down, took his identification, and told him to sit on a curb).

Defendant further contends that even if he was asked and not directed to sit on a curb, the fact that the interaction took place on a cold night and that defendant was subject to a pat down weigh in favor of a custody determination for *Miranda* purposes. The People disagree. Defendant relies on *Mumford* in contending that the pat-down, combined with the time and place of the interaction and that he was asked to sit on the curb, indicates to a reasonable person that he or she is in custody for *Miranda* purposes.

Defendant's reliance on *Mumford* is inapposite. In that case, the police came to Mumford's residence during the day to execute a search warrant and an arrest warrant for Mumford's friend. 270 P.3d at 954. Police arrived at the residence with their guns drawn,¹ arrested Mumford's friend, patted down everyone on the scene (including Mumford), handcuffed everyone, and then directed everyone to sit on a

¹ The police quickly holstered their weapons upon completing a sweep of the residence. *Id.* at 954. The court found it significant that police did not engage Mumford in conversation with their weapons drawn. *Id.* at 958.

nearby curb. *Id.* at 954–55. When speaking to Mumford, police asked whether there was anything in the house they needed to know about. *Id.* The tone was conversational, and the court noted that Mumford did not demonstrate any unwillingness to talk to police. *Id.* Mumford then launched into a free narrative that incriminated himself. *Id.* Nowhere in the opinion does the court discuss the pat-down or even indicate that it was even relevant to the custody analysis. The court instead focuses on the fact that Mumford was handcuffed and was *directed* to sit on the curb. *Id.* at 957–58 (emphasis added). The court held that though these facts indicated Mumford was “seized” for Fourth Amendment purposes, he was not in custody for *Miranda* purposes because the facts did not rise to the level of an arrest. *Id.*

Compare *Mumford* with the facts in *People v. Polander*. In *Polander*, police were investigating a white van parked outside a Burger King for suspected narcotics violations. 41 P.3d at 701. At around 10:45 at night, police asked the occupants of the van to step out, patted them down for weapons, and directed them to sit on a nearby curb. *Id.* The suspects were not handcuffed. *Id.* As was the case in *Mumford*, nowhere in the *Polander* opinion does the court treat the pat-

down for weapons as determinative of the custody issue. Rather, the court found it more significant that Polander had observed her companions being detained and questioned about narcotics possession. *Id.* at 705. Because Polander had observed these detentions and was also questioned about evidence found in the van, the court reasoned that “[Polander] had every reason to believe she would not be briefly detained and then released” *Id.*

In sum, the trial court correctly determined that defendant was not in custody when he spoke with Agents Crewse and Saunders in the parking lot of the victim’s apartment complex. CF, p 83; TR 6/2/17, p 60:3–4. In this case, many of the traditional indicia of a custodial interrogation were present. Police did not handcuff defendant, physically restrain him, inform him that he was under arrest, or indicate that he was obligated to speak. TR 6/2/17, pp 58, 61–2. The totality of the circumstances supports the trial court’s conclusion that defendant was not in custody for *Miranda* purposes and this Court should affirm.

Applicant Details

First Name	Suraj
Last Name	Vege
Citizenship Status	U. S. Citizen
Email Address	sv183@duke.edu
Address	<div>Address</div> <div>Street</div> <div>1505 Duke University Rd, Apt 3A</div> <div>City</div> <div>Durham</div> <div>State/Territory</div> <div>North Carolina</div> <div>Zip</div> <div>27701</div> <div>Country</div> <div>United States</div>
Contact Phone Number	9199954972

Applicant Education

BA/BS From	University of North Carolina-Chapel Hill
Date of BA/BS	December 2018
JD/LLB From	Duke University School of Law https://law.duke.edu/career/
Date of JD/LLB	May 7, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Duke Environmental Law and Policy Forum
Moot Court Experience	Yes
Moot Court Name(s)	Duke Law Moot Court Board

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Frakes, Michael
michael.frakes@law.duke.edu
(919) 613-7185

Levy, Marin
Levy@law.duke.edu
919-613-8529

Creeley, Will
will@thefire.org
(215) 717-3473

Buell, Sam
buell@law.duke.edu
919-613-7193

References

Professor Marin Levy (Duke Law School)
Phone: (919) 613-8529
E-mail: levy@law.duke.edu

Professor Michael Frakes (Duke Law School)
Phone: (919) 613-7185
E-mail: michael.frakes@law.duke.edu

Professor Samuel Buell (Duke Law School)
Phone: (919) 613-7193
E-mail: buell@law.duke.edu

Mr. William Creeley (Foundation for Individual Rights in Education)
Phone: (215) 717-3473
E-mail: will@thefire.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

1505 Duke University Road
Durham, NC 27701

June 20, 2021

The Honorable Elizabeth W. Hanes
Spottswood W. Robinson III & Robert R. Merhige Jr. U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at Duke University School of Law writing to be considered a clerkship for the 2022 term or any subsequent term. I expect to receive my J.D. in May of 2022 and will be available to clerk anytime thereafter.

I have the skills to excel as a clerk. Through the Innocence Project, the Clemency Project, and Lawyer on the Line programs, I gained hands-on experience working with a team, writing persuasively, and navigating court deadlines. As staff editor with the Duke Environmental Law and Policy Forum I have gained additional research and writing experience; I look forward to leading a team of staff editors as a research editor next year.

This summer, I am working for the Federal Public Defender's Office for the Eastern District of Virginia. Over the past few weeks, I have drafted position papers, motions for compassionate release, § 2255 motions, and other court filings. I have also done various research projects. For the second half of this summer, I will be working for the Office of the Appellate Defender in North Carolina. Last summer, I interned at the Foundation for Individual Rights in Education (FIRE), where I gained experience working on constitutional and government litigation issues. I assisted the litigation and policy teams with a wide variety of matters relating to the First Amendment, academic freedom, and § 1983 claims. I believe these experiences will give me a valuable perspective and set of analytical skills I can use to contribute positively as a clerk.

I have enclosed my resume, Duke Law transcript, writing sample, and letters of recommendation from Professor Marin Levy, Professor Michael Frakes, Professor Samuel Buell, and Mr. William Creeley. I would be happy to provide any additional information you may require. Thank you for your consideration.

Sincerely,



Suraj Vege

Suraj Vege

1505 Duke University Road, Durham, NC 27701 | sv183@duke.edu | (919) 995-4972

EDUCATION**Duke University School of Law, Durham, NC***Juris Doctor and Certificate in Public Interest and Public Service Law* expected, May 2022

GPA: 3.54

Honors: Moot Court Board

Activities: Duke Environmental Law and Policy Forum, *Research Editor*
 Clemency Project
 Innocence Project, *Active Investigations Team*
 Lawyer on the Line, *Legal Aid Pro Bono Project*
 Vis Moot International Arbitration Competition, *Research Assistant*
 Environmental Law Society, *Pro Bono Research Assistant*

University of North Carolina at Chapel Hill, Chapel Hill, NCBachelor of Arts in Political Science, *with distinction*, December 2018

GPA: 3.63

Activities: UNC Mock Trial
 The LAB! Theatre Company, *Actor, Director, Assistant Producer*
 Professor Hornstein, *Environmental Law Summer Research Assistant*

EXPERIENCE**Office of the Appellate Defender, Durham, NC***Legal Intern/Extern*, July 2021 – December 2021**Federal Public Defender's Office for the Eastern District of Virginia, Norfolk, VA***Legal Intern*, May 2021 – July 2021

- Drafted legal motions and court filings on behalf of indigent defendants.
- Researched and compiled case law to support arguments and filings.

Foundation for Individual Rights in Education (FIRE), Philadelphia, PA*Legal Intern*, May 2020 – August 2020

- Drafted legal memoranda with circuit-specific data on topics such as standing for national non-profit specializing in First Amendment advocacy on college campuses.
- Researched and compiled nationwide data on speech codes for litigation and policy teams.
- Drafted letters and outreach statements for students and professors reprimanded for speech.

UNC Student Honor Advocates, Chapel Hill, NC*Director*, August 2018 – January 2019; *Director of Training*, November 2017 – July 2019

- Founded UNC's first and only independent student defense organization.
- Increased membership to 78, interviewed advocates, and made plans for development.
- Advocated on behalf of students accused of misconduct in the UNC Honor Court.
- Created curriculum to teach advocates about the basics of legal writing and advocacy in the Honor System.

Matheson and Associates, PLLC, Raleigh, NC*Legal Clerk*, June 2017 – August 2017; *Research Intern*, December 2016 – March 2017

- Researched and compiled case law on behalf of a criminal defense firm focusing on DWIs.
- Aided in creation of new website for firm; edited marketing materials and legal documents.
- Wrote preliminary drafts of legal documents.

ADDITIONAL INFORMATION

Conversational in French and Telugu; knowledge of Italian and Russian. Interests include martial arts (Jiu Jitsu, Judo, Boxing, Aikido), music (Piano, Flute, Guitar), and science fiction/fantasy books. Director of Photography for short film, *Pathways to Success*, shown at Longleaf Film Festival 2018 at NC Museum of History. Also worked as a stage technician at Carolina Performing Arts (2016–2018).

DUKE UNIVERSITY - Unofficial Transcript

Page 1 of 2

Name: Suraj Vege
Student ID: 2257337

6/7/2021

Academic Program History

Program: Law School
(Status: Active in Program)
Plan: Law (JD) (Primary)

Beginning of Law School Record

2019 Fall Term

Course	Description	Units Earned	Official Grade	Grading Basis
LAW 110	CIVIL PROCEDURE	4.500	3.3	GRD
LAW 130	CONTRACTS	4.500	3.3	GRD
LAW 160A	LEGAL ANLY/RESEARCH/WRIT	0.000	CR	CNC
LAW 180	TORTS	4.500	3.7	GRD

Term GPA: 3.433 Term Earned: 13.500

Cum GPA: 3.433 Cum Earned: 13.500

2020 Winter Term

Course	Description	Units Earned	Official Grade	Grading Basis
LAW 844	Counselor and Client	0.500	CR	CNC

Term GPA: 0.000 Term Earned: 0.500

Cum GPA: 3.433 Cum Earned: 14.000

2020 Spring Term

Course	Description	Units Earned	Official Grade	Grading Basis
LAW 101	FOUNDATIONS OF LAW	1.000	CR	ABC
LAW 120	CONSTITUTIONAL LAW	4.500	CR	CNC
LAW 140	CRIMINAL LAW	4.500	CR	CNC
LAW 160B	LEGAL ANLY/RESEARCH/WRIT	4.000	CR	CNC
LAW 170	PROPERTY	4.500	CR	CNC

Term GPA: 0.000 Term Earned: 18.500

Cum GPA: 3.433 Cum Earned: 32.500

2020 Fall Term

Course	Description	Units Earned	Official Grade	Grading Basis
LAW 235	ENVIRONMENTAL LAW	3.000	3.9	GRD
LAW 245	EVIDENCE	4.000	3.3	GRD
LAW 343	FED. COURTS I: JUDICIAL POWER	3.000	3.5	GRD
LAW 422	CRIMINAL TRIAL PRACTICE	3.000	3.7	GRD
LAW 614	JD PROFESSIONAL DEVELOPMENT	0.000	CR	PFI

Term GPA: 3.576 Term Earned: 13.000

THIS IS NOT AN OFFICIAL TRANSCRIPT – FOR REFERENCE ONLY

DUKE UNIVERSITY - Unofficial Transcript

Page 2 of 2

Name: Suraj Vege
Student ID: 2257337

6/7/2021

Cum GPA: 3.503 Cum Earned: 45.500

2021 Spring Term

Course	Description	Units Earned	Official Grade	Grading Basis
LAW 200	ADMINISTRATIVE LAW	3.000	3.3	GRD
LAW 238	ETHICS/LAW OF LAWYERING	2.000	3.9	GRD
LAW 290	REMEDIES	3.000	3.5	GRD
LAW 306	CORP CRIME	4.000	3.7	GRD
LAW 460	NEGOTIATION	3.000	3.7	GRD

Term GPA: 3.606 Term Earned: 15.000

Cum GPA: 3.540 Cum Earned: 60.500

Law School Career Earned

Cum GPA: 3.540 Cum Earned: 60.500

THIS IS NOT AN OFFICIAL TRANSCRIPT – FOR REFERENCE ONLY

6/14/2021

Internal Transcript

1 of 1

View All

Seq Nbr1

ID 730040047 Suraj Vege

Internal Unofficial Transcript - UNC Chapel Hill

Name : Suraj Vege

Student ID: 730040047

Print Date : 2021-06-14

- - - - - Degrees Awarded - - - - -

Degree : Bachelor of Arts

Confer Date : 2018-12-16

Degree Honors : Distinction

Plan : College of Arts and Sciences

Political Science

Plan : Dramatic Art

- - - - - Test Credits - - - - -

Test Credits Applied Toward AS Bachelor Program

2015 Fall

ECON	100	ECONOMIC PRINCIPLES	3.00	3.00 BE
ENEC	202	ENVIRONMENTAL SCIENCE	4.00	4.00 BE
FREN	203	INTER FRNCH I	3.00	3.00 BE
FREN	203	INTER FRNCH I		0.00 BE
FREN	204	INTER FRNCH II	3.00	3.00 BE
FREN	204	INTER FRNCH II		0.00 BE
HIST	128	AM HIST SINCE 1865	3.00	3.00 BE
MATH	110P	ALGEBRA		0.00 BE
MATH	110P	ALGEBRA		0.00 BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00 BE

6/14/2021

Internal Transcript

MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
PSYC	101	GENERAL PSYCHOLOGY	3.00	3.00	BE
Test Trans GPA:		0.000	Transfer Totals :	19.00	19.00 0.000

- - - - - Academic Program History - - - - -

Program : AS Bachelor

2015-05-13 : Active in Program

2015-05-13 : Biology (BS) Major

2015-06-09 : Active in Program

2015-06-09 : Economics (BA) Major

2016-11-22 : Active in Program

2016-11-22 : Economics (BA) Major

2016-11-22 : Biology Second Major

2016-11-22 : Dramatic Art Minor Minor

Program : AS Bachelor of Arts

2017-05-17 : Active in Program

2017-05-17 : Economics Major

2017-05-17 : Biology Second Major

2017-05-17 : Dramatic Art Minor Minor

2018-06-21 : Active in Program

2018-06-21 : Political Science Major

2018-06-21 : Dramatic Art Minor Minor

- - - - - Beginning of Undergraduate Record - - - - -

2015 Fall

DRAM	135	ACTING/NON-MAJORS	3.00	3.00 A	12.000
ECON	101	ECON: INTRO	3.00	3.00 B	9.000
PHIL	105	CRITICAL THINKING	3.00	3.00 B+	9.900
PUBA	401	STATE/LOCAL GOVERNANCE	3.00	3.00 B-	8.100
RUSS	101	ELEMENTARY RUSSIAN	4.00	4.00 A	16.000

6/14/2021

			Internal Transcript		
TERM GPA :	3.438	TERM TOTALS :	16.00	16.00	55.000
CUM GPA :	3.438	CUM TOTALS :	16.00	35.00	55.000
Good Standing					
2016 Spr					
CHEM	101	GEN DESCRIPT CHEM I	3.00	0.00 W	
ENGL	105I	ENG COMP/RHET (INTERDISC)	3.00	3.00 A-	11.100
Course Topic(s): Writing in the Law					
EURO	239	INTRO EUROPEAN GOVT	3.00	3.00 B	9.000
HIST	135	INDIAN SUBCONTINENT TO 1750	3.00	3.00 B+	9.900
LFIT	113	LIFE FITNESS: WEIGHT TR	1.00	1.00 A	4.000
PHYA	209	BEGINNING BASIC TRAINING	1.00	0.00 A	
Grading Basis: EXCLUDE FROM HRS TO GRADUATION					
ROML	56	FYS: ITALS IN SRCH OF HM	3.00	3.00 A	12.000
TERM GPA :	3.571	TERM TOTALS :	17.00	13.00	50.000
CUM GPA :	3.500	CUM TOTALS :	33.00	48.00	105.000
Dean's List					
Good Standing					
2016 SumII					
BIOL	101	PRINCIPLES OF BIOL	3.00	3.00 A	12.000
DRAM	120	PLAY ANALYSIS	3.00	3.00 A	12.000
TERM GPA :	4.000	TERM TOTALS :	6.00	6.00	24.000
CUM GPA :	3.583	CUM TOTALS :	39.00	54.00	129.000
Good Standing					
2016 Fall					
ASTR	101	INTRO ASTRO I	3.00	3.00 A	12.000
BIOL	101L	INTRO BIOLOGY LAB	1.00	1.00 A	4.000
COMM	371	ARGUMENTATION	3.00	3.00 A-	11.100

6/14/2021

Internal Transcript

POLI	150	INTERN REL WRLD POL	3.00	3.00 A-	11.100
STOR	155	INTRO DATA MODELS & INFERENCE	3.00	3.00 A	12.000
WMST	101	INTRO TO WMN STUD	3.00	3.00 A-	11.100
TERM GPA : 3.831			TERM TOTALS :	16.00 16.00	61.300
CUM GPA : 3.660			CUM TOTALS :	55.00 70.00	190.300

Dean's List

Good Standing

2017 Spr

CHEM	101	GEN DESCRIPT CHEM I	3.00	3.00 A-	11.100
DRAM	282	THEATRE HIST/LIT II	3.00	3.00 A	12.000
ENGL	261	INTRO TO LIT CRIT	3.00	3.00 B+	9.900
POLI	411	CIVIL LIB IN U S	3.00	3.00 A	12.000
STOR	113	DECISION MODELS FOR BUSI &ECON	3.00	3.00 B	9.000
TERM GPA : 3.600			TERM TOTALS :	15.00 15.00	54.000
CUM GPA : 3.646			CUM TOTALS :	70.00 85.00	244.300

Dean's List

Good Standing

2017 Sum I

HIST	432	The Crusades	3.00	3.00 A-	11.100
TERM GPA : 3.700			TERM TOTALS :	3.00 3.00	11.100
CUM GPA : 3.649			CUM TOTALS :	73.00 88.00	255.400

Good Standing

2017 Fall

BIOL	201	ECOLOGY AND EVOLUTION	4.00	4.00 B-	10.800
CHEM	102	GEN DESCRIPT CHEM II	3.00	0.00 W	
DRAM	281	THEATRE HIST/LIT I	3.00	3.00 A	12.000

6/14/2021

Internal Transcript

POLI	416	CONST POL JUD PROC	3.00	3.00 A-	11.100
PWAD	368	WAR/AM SOC TO 1903	3.00	3.00 C+	6.900
TERM GPA :		3.138	TERM TOTALS :	16.00	13.00
					40.800
CUM GPA :		3.569	CUM TOTALS :	89.00	101.00
					296.200

Good Standing

2018 Spr

ENEC	350	ENV LAW & POLICY	3.00	3.00 A	12.000
PHIL	280	MORALITY AND LAW	3.00	3.00 A-	11.100
POLI	100	INTRO TO GOVT IN US	3.00	3.00 A	12.000
POLI	281	QUANT POLI SCI	3.00	3.00 A	12.000
RUSS	102	ELEMENTARY RUSSIAN	4.00	4.00 A	16.000
TERM GPA :		3.944	TERM TOTALS :	16.00	16.00
					63.100
CUM GPA :		3.629	CUM TOTALS :	105.00	117.00
					359.300

Dean's List

Good Standing

2018 Fall

ANTH	148	HUMAN ORIGINS	3.00	3.00 B	9.000
DRAM	488	US LATINO/A THEATRE	3.00	3.00 A-	11.100
POLI	202	THE U S SUPREME COURT	3.00	3.00 A-	11.100
POLI	271	MOD POL THOUGHT	3.00	3.00 A-	11.100
RUSS	203	INTERMEDIATE RUSSIAN I	3.00	3.00 A	12.000
TERM GPA :		3.620	TERM TOTALS :	15.00	15.00
					54.300
CUM GPA :		3.628	CUM TOTALS :	120.00	132.00
					413.600

Dean's List

Good Standing

Cancel

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 21, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Suraj Vege

Dear Judge Hanes:

I am writing to recommend enthusiastically Suraj Vege for a federal judicial clerkship. He is a wonderful asset to any classroom – very reflective, intellectually curious, and especially hardworking. I have no doubt whatsoever that he would be a tremendous addition to your judicial office.

In the fall of 2019, I taught Suraj in my first-year Torts course. I particularly got to know Suraj that semester through his frequent visitations to office hours. Each session, he came prepared with a series of questions that really probed the contours of the range of doctrines that we covered in class. He is among the most analytically diligent students I have taught in my ten years in the legal academy. It was clear that not only had he become comfortable with understanding the rules applied in each case and the rationales behind such rules, but he also became comfortable in filling all of the gaps that he could plausibly think of in applying these rules in related fact patterns. With this in mind, I was not remotely surprised to see his exam performance. That semester happened to be very competitive at the top of the grade distribution and Suraj scored in roughly the top 15% of the grades I gave out, with admittedly little space separating his grade from the very top grades. His performance reflected both pure hard work and a baseline propensity for rich legal analysis, combined with a willingness to engage and communicate with others in reasoning through the margins of the law.

Beyond his comfort with the doctrine and with analytical reasoning, my frequent interactions with Suraj evidenced to me that his intellectual curiosity surrounding tort law extends to the big picture as well. We often spoke about various policy considerations underlying our doctrinal conversations and about a range of methodological approaches to torts scholarship, including approaches from a law and economics lens (given my background) and a philosophical lens. I learned much from Suraj through these interactions and have greatly missed having the chance to casually interact with him in the law school building throughout the course of the pandemic. I look forward to the interactions I am sure to have with him in his coming 3L year and to his enthusiastic intellectual curiosity.

Based on my own interactions with Suraj and my observations of his passion for the law and policy, I am not surprised to learn how active he has been during his time at Duke, with his participation in a range of projects from the Clemency Project to the Innocence Project to the Environment Law Society, among various others.

All in all, it is a true pleasure to be able to teach and work with Suraj. His inquisitiveness and deep analytical reasoning truly stand out. Due to his many strengths and attributes, Suraj would be an excellent addition to your office, and I am confident that he would benefit from the opportunity.

If you have any questions, please do not hesitate to contact me at michael.frakes@law.duke.edu or 919-613-7185.

Sincerely,

Michael Frakes
A. Kenneth Pye Professor of Law and Professor of Economics
Duke University Research Associate,
National Bureau of Economic Research

Michael Frakes - michael.frakes@law.duke.edu - (919) 613-7185

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 21, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Suraj Vege

Dear Judge Hanes:

I am happy to recommend Suraj Vege for a clerkship with you. Suraj is someone who is very bright and hardworking. And I think he would do well as a law clerk.

Over the years of teaching I have come to appreciate that you can often spot the most gifted students by the questions they ask, both in and outside of class. Suraj asked some of the very best questions when he was a student in a Civil Procedure course that I taught in the fall of 2019. He would often come to office hours to go over any material he had lingering doubts about, and it was always a pleasure to talk to him. In fact I saved some of the questions he asked, because I thought they would be valuable to go over in future classes. They included the following during our unit on joinder: *Is "the same transaction or occurrence" functionally equivalent to a "common nucleus of operative fact" or is there a distinction? Why are some counterclaims compulsory but crossclaims are only ever permissive? If counterclaims are compulsory for efficiency and finality reasons, wouldn't the same logic apply to crossclaims? If crossclaims are permissive because the defendant did not get to choose the forum, why wouldn't that logic apply to counterclaims?* I was truly impressed by such thoughtful questions, particularly coming from someone only in their first semester of law school.

Based on Suraj's insightful questions, and his often-flawless answers when cold-called, I knew that he had a terrific grasp of the course material. I was expecting him to receive one of the highest grades on the final exam. He ultimately received a 3.3 for the class—the required median at Duke and a good grade in a very competitive group—but a grade that does not fully capture all that he knew. I think some of our strong students sometimes need to learn the art of taking a law school exam and I believe Suraj fit into this category. It is no accident that his scores improved markedly in the subsequent semesters.

Given what a strong student I know Suraj to be, I was delighted to see that he signed up this past spring for an upper-level Remedies course that I teach. I think the pandemic was particularly hard on Suraj, and he did not participate over Zoom quite the way that he had during his first-year in law school (in person). Still, he wrote a strong exam and received a 3.5 for his efforts.

I think it is also impressive that during a difficult year for everyone, Suraj was able to make an impact with quite a few wonderful organizations here at the Law School. He had the honor of making it to the Moot Court Board. Beyond that, Suraj has served as a research assistant for both the Vis Moot International Arbitration Competition and the Environmental Law Society, and further did work for both the Clemency Project and the Innocence Project. His hard work no doubt has made a significant impact not only at the Law School but the greater community.

In short, I think Suraj is very bright and has a keen intellect. I think he would be a diligent and dedicated law clerk and am happy to recommend him to you. If there are any questions I can answer, please do not hesitate to be in touch.

Thank you so much for your consideration,

Marin K. Levy
Professor of Law

Marin Levy - Levy@law.duke.edu - 919-613-8529



June 21, 2021

To Whom It May Concern:

It is a pleasure to recommend Suraj Vege for a judicial clerkship. Suraj is an impressive student of the law, with a searching intelligence and a calm, resourceful approach to research and writing. Capable of producing valuable, thoughtful work with limited supervision, Suraj is both an independent thinker and a trusted teammate.

I am the Legal Director for the Foundation for Individual Rights in Education (FIRE), a nonpartisan, nonprofit organization dedicated to defending the rights of students and faculty at our nation's colleges and universities. Since joining FIRE in 2006, I have had the privilege of working with smart, dedicated colleagues of different faiths, political convictions, and backgrounds, united by our belief in the necessity of protecting core civil liberties on American campuses. By design, our legal intern classes mirror this diversity of experience. Each June, it is a delight to see these dedicated students dive headlong into conversation with us and each other, learning from our differences as much as our similarities. To his credit, Suraj was right at home in our dynamic, fast-paced workplace, despite the challenges presented by working remotely via phone calls, video conferencing, instant messages, and e-mail. He acts out of commitment to principle, and possesses the conviction necessary for our work.

Suraj completed tasks quickly and confidently, diving headlong into complex assignments, but never hesitating to ask important, clarifying questions about the tasks in front of him. A reliable colleague, Suraj's work for FIRE included performing research into Section 1983 claims and qualified immunity; drafting an analysis of the False Claims Act and its relationship to student handbooks; contacting students who had suffered rights violations and preparing letters regarding their allegations; preparing an analytical overview of the judicial response to precedential decisions generated by FIRE's litigation program; reviewing the policies governing expressive rights at specific institutions; and surveying circuit-specific jurisprudence on the use of the student handbooks as contracts. Suraj completed each assignment on time and without issue, and he was a pleasure to work with.

I have met impressive legal interns during my time at FIRE, and I have been proud to see them progress through the nation's best law schools and on to successful legal careers. I have no doubt that Suraj will continue this commendable tradition, and I am confident that he will be a credit to his future employers, just as he was to us. I believe Suraj will be an excellent clerk, given his abilities and dedication. It is my pleasure to recommend him. I would of course be happy to discuss his qualifications further at your convenience.

Sincerely,

Will Creeley
Legal Director

510 Walnut Street, Suite 1250 Philadelphia, PA 19106
phone: 215-717-3473 fax: 215-717-3440
thefire.org

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 21, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Suraj Vege

Dear Judge Hanes:

I write to recommend Suraj Vege for the position of law clerk in your chambers. I do so with enthusiasm.

Suraj was a student of mine this last spring semester in Corporate Crime, a highly demanding course at Duke Law, as well as in a large section of the first-year Criminal Law course I taught in the spring of 2020. I have gotten to know Suraj from his participation in my courses, meetings outside of class, and my review of his written work.

Suraj is a mature, directed, skilled law student who has taken advantage of the many opportunities available to him at Duke Law to prepare himself for what I am confident will be a successful, high-echelon career in the legal profession.

Suraj's grade of 3.7 in my Corporate Crime class, during his second year at the law school, was genuinely excellent. This group of 40 exams was among the strongest I have read as a law teacher. The course is especially challenging because it requires students to understand and use many bodies of law that are taught in stand-alone courses in the upper-level curriculum: corporate governance, securities regulation, evidence, criminal procedure, federal criminal law, and professional responsibility. Suraj's exam paper in the Criminal Law course in his first year was impressive. Had we not been required to grade on a pass-fail basis that semester due to the pandemic, his paper likely would have earned a grade above the median in a large group of highly motivated students who produced an exceptionally strong set of exam papers in spite of difficult conditions.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, I am confident in predicting that Suraj Vege would be a valued clerk in the chambers of any judge with a demanding docket. I am happy to assist you further in any way with your evaluation of his application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

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Writing Sample

This is an open appellate memorandum written for my Legal Analysis, Research, and Writing course regarding *Florida Lottery v. Barr* in the Eleventh Circuit Court of Appeals. Research was conducted independently with guidance from the professor. In the memorandum, we were asked to discuss the scope of the Wire Act (18 U.S.C. § 1084(a) (2018)) and its possible application to the Florida State Lottery. I wrote on behalf of the Department of Justice that the Act is meant to apply to gambling in general, so it would be inclusive of the Lottery's activities.

The Wire Act's § 1084(a) prohibits the use of wire communications to transmit certain gambling-related information. This potentially had disastrous consequences for the Florida Lottery if its activities fell under the Act's ambit. The United States, for its part, argued that the section was meant to be broad enough to encompass the Lottery's activities. As counsel for the United States, I argued that the plain text and legislative history of the Wire Act indicate that it was meant to apply broadly and not just to sports gambling as the Lottery contended. In the memorandum, I make two arguments following this thesis. The first divides the section into two clauses and four prohibitions. It then argues that a plain text reading of the Wire Act supports the view that it applies broadly. The second argument examines the legislative history of the Wire Act and concludes that the DOJ's reading supports Congress' intent to make the Act apply broadly.

This sample is 9 pages of the original 14. It includes the two main arguments and the statement of the case. I have deleted the cover page, table of contents, and table of authorities. A sub-argument regarding the rule of lenity and its applicability has also been deleted. To comply with submission parameters, citations to the joint appendix are via shorthand [(JAX)]. Notably, students were instructed that a discussion of *Chevron* deference was outside the scope of the assignment, so my analysis does not address its applicability. I am happy to send the complete document upon request. This writing sample represents my own work and has not been edited by anyone else.

STATEMENT OF THE CASE

In 1961, Congress passed the Wire Act, which was a law that criminalized the use of wire communication facilities to transmit gambling related information in interstate or foreign commerce. 18 U.S.C. § 1084(a) (2018). The scope of this statute was the subject of opinions from the Office of Legal Counsel (OLC). In 2011, the OLC issued an opinion that the Wire Act only applied to sports gambling. Whether Proposals By Illinois and New York to Use the Internet and Out-of-State Transactions Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, 35 Op. O.L.C., 12 (Sept. 20, 2011). In 2018, it reversed course and said that the Act was meant to apply to gambling generally. Reconsidering Whether the Wire Act Applies to Non-Sports Gambling, 42 Op. O.L.C., 14 (Nov. 2, 2018). In 2019, the DOJ instructed its attorneys to adhere to the OLC's 2018 interpretation. (JA9).

The Appellant is the Florida Lottery. (JA2). The Lottery manages various lottery games; to administer them, it utilizes a computer gaming system (CGS). (JA3). The CGS servers are located in Nevada, and there is a disaster recovery location in Ohio. (JA4). Retailers are able to access the CGS to record sales and game information for various kinds of games. (JA4–7). The Lottery uses wire communication to transmit this gambling information from Florida to Nevada and Ohio. (JA5). These communications transmit gambling information over state lines, and they are consequently articles of interstate commerce. Id. The Lottery also maintains a universally accessible website and releases advertisements on the internet that inform people about how to participate. (JA7).

The Florida Lottery worried the 2018 OLC opinion would expose it to criminal liability for its reliance on wire communication to transmit gambling information through interstate commerce. (JA10). Relying on the OLC's 2011 opinion, the Lottery filed suit against the DOJ seeking declaratory judgment that the Wire Act does not apply to state-run lotteries. (JA2; JA11).

At the lower level, the DOJ filed a 12(c) motion for judgment on the pleadings as the 2011 OLC opinion is now outdated. (JA25). The United States District Court for the Northern District of Florida decided the novel issue of whether the Wire Act was limited to sports gambling. (JA25). Even considering the evidence in the light most favorable to the Lottery, the court agreed with the DOJ and granted the motion in its favor. (JA25–26). The lottery now appeals the decision to this Court. (JA27).

In reviewing the Florida lottery’s appeal from a 12(c) judgment on the pleadings, this Court must consider the evidence *de novo*. Ortega v. Christian, 85 F.3d 1521, 1525 (11th Cir. 1996). This Court will also need to decide whether the Wire Act is limited to sports gambling. Such a question of statutory interpretation is also reviewed *de novo*. United States v. Rojas, 718 F.3d 1317, 1319 (11th Cir. 2013).

ARGUMENT

Section 1084(a) of the Wire Act is meant to apply to all types of gambling.

This Court should find that the Wire Act extends beyond sports gambling and covers all kinds of gambling. The relevant text of the Wire Act, 18 U.S.C. § 1084(a) (2018) reads:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both. § 1084(a).

The Wire Act is divided into two clauses with four prohibitions. The first clause prohibits the use of a wire communication facility (1) for the transmission of bets and wagers in interstate

or foreign commerce and (2) for the transmission of sports-related gambling information. The second clause prohibits the transmission of a wire communication (3) entitling someone to receive money or credit as a result of bets and wagers or (4) for information assisting in the placement of bets and wagers.

Neither clause supports that the Wire Act is meant to be limited to sports gambling. From the text, only prohibition two of clause one is meant to be so limited; the rest of the section should apply to bets and wagers generally. Legislative history also supports this interpretation since the purpose of the Wire Act was to combat illegal gambling from organized crime. Considering the text, history, and policy behind the Wire Act, there is not enough ambiguity for the rule of lenity to apply. Accordingly, the Court should affirm the judgment of the lower court and find that the Wire Act is not limited to sports gambling.

A. The plain text of the Wire Act supports that it is meant to encompass all types of gambling.

The text of §1084(a) unambiguously shows that it is meant to apply to all types of gambling. When interpreting a statute, the Court must begin with its text and go no further if the language is unambiguous. In Re Paschen, 296 F.3d 1203, 1207 (11th Cir. 2002). Then, the Court must “enforce plain and unambiguous statutory language according to its terms.” Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251 (2010). The Wire Act in its entirety is applicable to *anyone* “engaged in the business of betting or wagering”, as evidenced by its opening line. 18 U.S.C. § 1084(a). Sports gambling is only specifically mentioned as a limiting modifier in prohibition two of clause one, which outlaws the use of a wire communication to assist in the placing of bets and wagers on any sporting event or contest (“the sports gambling modifier”). To accept the Florida Lottery’s contention, this one modifier in the middle must somehow encompass the whole section. To rule this way would be contrary to the structure of the statute; the sports gambling modifier can only be properly read to modify its nearest antecedent. The prohibition also

cannot restrict the second clause because there is no evidence to support that the words of clause one somehow extend to clause two.

1. The sports gambling modifier should only be read to encompass the second half of the first clause.

The sports gambling modifier's reach is limited to prohibition two where it appears. The Court should employ the last antecedent rule when analyzing this statute. This rule provides that a limiting clause should ordinarily only modify the idea it immediately follows. Lockhart v. United States, 136 S.Ct. 958, 962 (2016). The rule is often applied to situations where there is a "list of terms or phrases followed by a limiting clause." Id.; Paschen, 296 F.3d at 1209 (adopting the rule).

Since the sports gambling modifier appears at the end of a list of two prohibitions, the last antecedent rule is applicable. The modifier should only apply to bets and wagers listed in the second prohibition, where it appears. § 1084(a). The sports modifier should reach no further under the last antecedent rule. Paschen, 296 F.3d at 1209 (noting that qualifying phrases only apply to phrases immediately preceding and should not extend to others more remote). The second half of §1084(a) is the only section limited to sports gambling.

While other indicia of meaning could rebut the last antecedent rule (Lockhart, 136 S.Ct. at 965), there are no such indicia here. A limiting principle can sweep beyond its nearest referent only if it could reasonably be applied to all items on a list. Lockhart, 136 S.Ct. at 963. This canon of interpretation, the series qualifier rule, holds that a modifier should apply to all items in a series where it is natural to associate them together. Id.; United States v. McDaniel, 631 F.3d 1204, 1209 (11th Cir.) (adopting the rule). However, this canon is limited to lists that are "simple and parallel without unexpected internal modifiers or structure." Lockhart 136 S.Ct. at 963.

It would be illogical to apply the series qualifier rule here because the concepts do not form a simple list applicable to the sports gambling modifier. The sports gambling modifier is part of a longer modifier. The language prohibits the use of a wire communication facility to transmit

“information assisting in the placing of bets or wagers on any sporting event or contest.” § 1084(a) (emphasis added). Given the full phrase, it does not make sense to read the sports gambling portion as enveloping the whole clause without some contrary congressional intent. Furthermore, the two-prohibition structure is more complex than the situations where the series qualifier rule is normally applied. See Lockhart, 136 S.Ct. at 963. The last antecedent rule is more apt for this scenario.

Legislative history supports that Congress wanted to expand the reach of clause one beyond sports gambling. Congress could have chosen to employ commas between the prohibitions to clearly narrow the focus of the statute to sports gambling. As introduced, § 1084(a) prohibited the use of a wire facility: “[F]or the transmission in interstate or foreign commerce of bets or wagers, or information assisting in the placing of bets or wagers, on any sporting event or contest....” H.R. 7039, 87th Cong. § 1084 (1961) (as introduced). The old construction, by using a subordinate clause and placing “sporting event or contest” outside of it, made it clear that the clause was limited to sports gambling. Congress abandoned this structure in the final version. § 1084(a). This suggests Congress did not want to limit the clause this way even though it could have. “Where Congress knows how to say something, but chooses not to, its silence is controlling.” Ela v. Destefano, 869 F.3d 1198, 1202 (11th Cir. 2017).

There is no intervening evidence that would require a departure from the last antecedent rule. The Court should find that the first clause of §1084(a) should only be limited to sports gambling in the second half of the clause.

2. The second clause of §1084(a) is not limited to sports gambling because the language does not appear in the clause.

There is even less evidence that the second clause should be limited to sports gambling. Section 1084(a)’s second clause is very clear about what it is meant to include. The language makes no mention of sports gambling and is thus meant to apply generally. Where the statutory language is clear, the Court must not make any further inquiry about possible meaning. See

Managed Care Advisory Group, LLC v. CIGNA Healthcare, Inc., 939 F.3d 1145, 1161 (11th Cir. 2019). To read this clause as being limited to sports gambling would be directly contradictory to the plain meaning of the text.

There is a clear grammatical delineation between the two clauses in §1084(a). The first comma of the section divides them, and the language repeats the introductory determiner “for the transmission of” to introduce clause two. § 1084(a). This separation suggests that the two clauses were meant to be distinct. Even if the sports gambling modifier could carry forward, it would be odd to have it control the whole statute. The modifier would effectively be sweeping forwards and backwards. Thinking of the modifier in this way would require an unreasonable amount of mental energy as opposed to limiting the sports gambling modifier to the second prohibition, so this application should be rejected. Lockhart, 136 S.Ct. at 963.

While the Florida Lottery could argue that the wording of clause two is meant to be shorthand for fully formed concepts in clause one, the sports gambling modifier cannot be carried over under this rationale. Under this argument, the introductory modifier “for the transmission of” in clause two reflects “for the transmission in interstate or foreign commerce of” in clause one. While this argument could work for the phrase just mentioned, it requires unnecessary interpretive gymnastics to carry the sports gambling modifier because the two phrases are not parallel.

The beginning qualifier forbidding the use of wire facilities can be logically read to extend to the rest of clause one: “Whoever...knowingly uses a wire communication facility for the transmission in interstate or foreign commerce *of* [a.] bets or wagers *or* [b.] information assisting....” § 1084(a) (emphasis added). The word “of” followed by “or” separating the two prohibitions implies that the beginning qualifier should apply to each. This fact, coupled with the repetition of “or for the transmission” in clause two, means that the shorthand argument could be applicable. By stark contrast, the sports gambling modifier does not have the same textual indicia

to support carrying it forward. If Congress truly wanted to extend the sports gambling modifier, it could have easily repeated the sports modifier language as it did in other parts of the Wire Act.

The Wire Act repeats the relevant language whenever it needs to extend the sports gambling provision. Section 1084(b) notes specific instances where transmission of sports betting information is allowed. It notes that news reporting and legal betting on sporting events is permissible. 18 U.S.C. § 1084(b) (2018). Clearly, Congress was able to repeat the phrase where it was necessary, which means its absence in clause 2 of §1084(a) was purposeful. Where language appears in one section but not another, Congress must have intended a difference in meaning. Digital Realty Trust, Inc. v. Somers, 138 S.Ct. 767, 777 (2018); See Ela, 869 F.3d at 1202.

There is insufficient evidence to support that the sports gambling modifier is meant to restrict clause two of § 1084(a). The Court should find that clause two is supposed to be a general provision that applies to all forms of gambling.

B. Legislative history supports that the Wire Act is meant to apply generally to gambling.

The history of the Wire Act supports that it was meant to apply broadly. Where the wording of a statute is clear, the Court should avoid any inquiry into legislative history. Nesbitt v. Candler County, 945 F.3d 1255, 1261–62 (11th Cir. 2020). Upon finding that the plain text of § 1084(a) is meant to generally apply to gambling, this Court should rule in favor of the DOJ. The history, nevertheless, supports that the Wire Act was meant to apply broadly to stop organized crime. Even if the Court finds the Wire Act’s purpose to be for sports gambling, Congress is free to legislate on other matters peripheral to the main purpose.

When the text is clear, one does not need to question legislative history. It is Congress’s job to sum up its debates and thoughts into its statute, and a court must only ask what the statute means. Epic Systems Corp. v. Lewis, 138 S.Ct. 1612, 1631 (2018). The Court must apply the meaning of the statute as written, and it should not turn to legislative history to undermine an

otherwise clear statute's meaning. Nesbitt, 945 F.3d at 1261–62 (11th Cir. 2020). A court must only turn to legislative history if the text itself is ambiguous. United States ex rel. Hunt v. Cochise Consultancy, Inc., 877 F.3d 1081, 1089 (11th Cir. 2018). Section 1084(a) is not ambiguous, so it is not necessary to delve into legislative history.

Even if the Court finds the statute to be ambiguous, the legislative record supports the DOJ's position. Congress's discussions always framed the Wire Act as a measure to combat illegal gambling from organized crime. The congressional record shows that with the Wire Act, Congress intended to crack down on racketeering and illegal gambling, which had developed into a seven-billion-dollar industry at the time. 107 Cong. Rec. 16533 (1961) (statement of Rep. Celler).

The Wire Act was one of a series of bills passed to hinder these activities. Id. Congress recognized that the use of telephone or other wire communications were essential to illegal gambling operations through bookmaking. Id. Through the Wire Act, Congress intended to target illegal bookmaking as a business by criminalizing wire communications for gambling generally. See 107 Cong. Rec. 16535 (1961) (statement of Rep. McCulloch). While discussions about the Act mentioned sporting events often, this was simply an easy example for the kind of behavior bookmakers engaged in. Reading the statute to apply only to sports gambling would thus fly in the face of the Wire Act's purpose.

Evidence shows that Congress intended the Wire Act to have a broad ambit. According to a report from the Committee on the Judiciary, the purpose of the Act was to aid the states in suppressing organized gambling activities. S. Rep. No. 87-588, at 2 (1961). The law was not meant to criminalize small, social bets, but enforcement against targeted activities necessitated broad coverage to even those activities so criminals would not escape liability. S. Rep. No. 87-588, at 3. Congress intended for the Wire Act to apply broadly, and to limit its purpose to sports gambling would be contrary to legislative history.

Even if the Court finds that Congress intended to target only sports gambling, Congress may nevertheless legislate beyond a primary purpose to cover “reasonably comparable evils.” Oncale v. Sundower Offshore Services, Inc., 523 U.S. 75, 79 (1998). Congress may regulate gambling in general even if its primary purpose was to regulate sports gambling. The words of the law should control over the intentions of the legislature. Id. Section 1084(a) can and should accordingly be construed as applying to gambling generally.

CONCLUSION

The plain text and legislative history of the Wire Act support the conclusion that it is meant to apply to gambling in general. The Court should therefore rule in favor of the DOJ and uphold the decision of the lower court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Suraj Vege". The signature is stylized with a large, looped 'S' and a cursive 'Vege'.

Suraj Vege
Counsel for Appellee

Applicant Details

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Applicant Education

BA/BS From **Roanoke College**
 Date of BA/BS **May 2017**
 JD/LLB From **Emory University School of Law**
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 Date of JD/LLB **May 11, 2021**
 Class Rank **50%**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Cardozo Entertainment National Online Moot Court Competition**

Bar Admission

Prior Judicial Experience

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Internships/ **Yes**
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

M. Nolan Webb
828 Argonne Ave NE, Apt. 5
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August 22, 2020

The Honorable Elizabeth Hanes
U.S. Magistrate Judge
Spottswood W. Robinson III & Robert R. Merhige, Jr. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year student at Emory University School of Law, and I write to apply for a clerkship in your chambers beginning in August of 2021. I apply to work in your chambers because I was born and raised in Virginia and plan on returning to state upon graduation.

I am confident that I could contribute meaningfully to your chamber's work based on my specific combination of experiences. During my time at Emory, I have studied administrative law, completing my seminar thesis on the Federal Black Lung Benefits program. I volunteer for three hours every week at Emory's Volunteer Veterans Clinic, an experience that has both solidified my interest in pro bono work and given me the opportunity to work with real clients while still in law school. In addition, I am a member of the Emory Moot Court Society, where I serve on the Executive Board as the Vice President of Finance and compete in the Cardozo Entertainment Law competition. Beyond my academic accomplishments, I have experience working in civil litigation at both two plaintiff firms and two defense firms, with each involving an intimate relationship with trial practice through the drafting of pleadings and the completion of meaningful legal research. Prior to my career in law, I worked for six years at *The Roanoke Times*, where I gained essential writing and editing skills that I intend to bring to your chambers.

My time working on both sides of civil litigation, multiple government offices, and in various academic leadership roles has given me an uncommon neutral perspective. This strength combined with my extensive experience writing, editing, and researching will prove a valuable asset to your chambers.

Please find enclosed my resume, law school transcripts, and an unedited writing sample. Do not hesitate to let me know if I can provide any additional information. I can be reached by phone at (540) 312-7773 or by email at mnnwebb@emory.edu. Thank you very much for considering my application.

Very truly yours,



Mark Nolan Webb
Candidate for Juris Doctor, 2021

M. NOLAN WEBB
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EDUCATION:

Emory University School of Law, Atlanta, Georgia

Juris Doctor candidate, May 2021

GPA: 3.247

Seminar thesis: “Black Lung Litigation: Inequities in the Benefits System”

Honors: Emory Moot Court Society, Board Member, Vice President of Finance.

Clinics: Emory Volunteer Clinic for Veterans, Weekly Volunteer.

Roanoke College, Salem, Virginia

Bachelor of Arts in Political Science, May 2017

Honors: Roanoke College Honors Program, Dean’s List (Spring 2014).

Activities: Old Dominion Athletic Conference, All-Sportsmanship Team; Pi Lambda Phi Fraternity, Rex (Chapter President); Literary & Debate Society, Founder/President; Student Athlete Advisory Board, Co-Chairman.

Maintained part-time employment throughout undergraduate studies.

EXPERIENCE:

Federal Trade Commission, Atlanta, Georgia

Legal Extern, August – November 2020. Placed in the consumer protection division.

Young Clement Rivers LLP, Charleston, South Carolina

Summer Law Clerk, June – August 2020. Completed legal research on topics ranging from commercial tax to maritime law; drafted pleadings, letters, and memorandums; attended depositions and City of Charleston municipal court hearings.

Strelka Law Office, PC, Roanoke, Virginia

Summer Associate, May – June 2020. Researched legal questions surrounding employment law; participated in litigation via attendance of consultations, depositions, hearings, mediations, and the drafting of court documents.

State of Georgia Office of the Attorney General, Atlanta, Georgia

Legal Extern, January 2020 – April 2020. Worked in the consumer financial protection division; participated in complex multi-state litigation regarding auto-manufacturers and debt collection agencies via the completion of legal research.

Phillips, Parker, Orberson & Arnett PLC, Louisville, Kentucky

Summer Law Clerk, May – August 2019. Participated in the intricacies of medical malpractice defense litigation; attended depositions, trials, and mediations; completed meaningful legal research.

Fishwick & Associates PLC, Roanoke, Virginia

Legal Assistant, November 2017 – August 2018. Conducted legal research; participated in litigation practices with a broad focus; learned the fundamentals of legal practice under a former U.S. Attorney.

Office of Virginia Delegate Sam Rasoul, Roanoke, Virginia

Impact Fellow, June – December 2017. Worked with constituents and analyzed casework to better assist in community affairs; assisted in launch and planning of new program that connected underserved citizens with government services.

The Roanoke Times, Roanoke, Virginia

Editorial Assistant, June 2011 – May 2017. Wrote weekly stories on local sporting events; edited stories for grammatical accuracy; attended sporting events at high schools and colleges to gather content.

ADDITIONAL INFORMATION:

Professional: Member, American Bar Association (Groups: Litigation, Young Lawyers & Appellate).

Language: Proficient in German.

Interests: Avid cyclist, fervent reader, & overly-competitive tennis player.

Mark Webb
Emory University School of Law
Cumulative GPA: 3.247

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Associations	George Shepherd	B	3.00	
Evidence	Julie Seaman	B	2.00	
Global Public Health Law	Rita-Marie Brady	B	2.00	
Pretrial Litigation	Diane Bessen	A-	4.00	
Seminar: Products Liability	Frank Vandall	B+	3.00	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Fred Smith	S	4	
Extern: Civil Litigation	Chris Giovinazzo	S	3	
Moot Court	Jennifer Romig	S	2	
Negotiations	Courtney Perry	S	2	
Sports Law	Sydnee Mack	S	3	

Due to Covid-19, all courses this semester were graded as satisfactory. No letter grades were awarded.

Mark Webb
Louis D. Brandeis School of Law at the University of Louisville
Cumulative GPA: 3.230

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Property I	Laura Rothstein	B	3.00	
Criminal Law	Sam Marcossan	A-	3.00	
Contracts I	Tim Hall	B+	3.00	
Torts I	Jamie Abrams	A	3.00	
Lawyering Skills I	Hollie Hopkins	B	3.00	

These grades are from my first-year coursework completed at the University of Louisville Brandeis School of Law. I have since transferred to Emory University School of Law.

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Lawyering Skills II	Hollie Hopkins	B	3.00	
Property II	Tony Arnold	B	3.00	
Contracts II	Tim Hall	B-	3.00	
Torts II	Laura Rothstein	B+	3.00	
Civil Procedure	Laura McNeal	B	3.00	

Mark Webb
Roanoke College
Cumulative GPA: 3.137

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American Presidents	Shelby	B	1	
Elementary German	Hassel	A	1	
Intellectual Inquiry	McGraw	B	1	
Social Scientific Reasoning	Kirby	A	1	

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil War History	Shelby	B+	1	
Elementary German II	Hassel	B	1	
Plenary Enrichment Program	Heller	A	.25	
Public Policy	Kirby	B	1	
Values Practicum	Wisnfske	B+	1	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Environmental History	Boucher	B-	1	
Intermediate German I	Ogier	B	1	
International Law	Snow	B	1	
The Human Journey		B	1	

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Plenary Enrichment Program	Heller	A	1	
Political Science I	Kirby	A	1	
Public Administration	Kirby	B-	1	
The Human Journey	Hargrove	A	1	

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
New Testament Christianities	Hinlicky	B	1	
Public Internship	X	P	1	
Seminal Figures and Issues	Heller	B	1	
Topics in Honors		B	1	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Controversies at the Supreme Court		A	1	
Greening of the US		A-	1	
Public Internship	X	P	2	
Ratify the Constitution	Garrison	A-	1	

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contemporary Challenges	Heckenburg	B+	1	
Liberalism and Conservatism	Garrison	B+	1	
Math Models		C	1	
Research Methods in Political Science	Parsons	B	1	
Scientific Reasoning-Biology		B-	1	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Comparative Politics: Asia	Snow	B-	1	
Fitness for Life		C+	.25	
Intermediate German II	Ogier	C	1	
International Politics	Rubonboya	B-	1	
Plenary Enrichment Program	Heller	A	0	
Seminar in Public Policy		B	1	

August 22, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a litigation partner at Burr & Forman LLP and have been practicing in the field of commercial litigation for 28 years.

In the Fall of 2020, i served as an Adjunct Professor at Emory Law School teaching a class in Pretrial Litigaiton. Nolan Webb was one of my students. I am writing to enthusiastically recommend Mr. Webb for a clerkship position.

The Pretrial Litigation class was a practice oriented class so i had the opportunity to personally review Mr. Webb's written work and judge him in mock oral arguments. I was very impressed on both counts. Mr. Webb's written work was well organized, persuasive, legally sound and free from careless mistakes.

When i judged Mr.Webb in moot court, i was impressed with his preparation, ability to think on his feet and ability to communicate persuasively. Mr. Webb received excellent grades from me on both his written work and his oral argument. His performance was particularly notable given that he was only one of two second year students in the class, the rest of the students were third years.

Leaving the merit of his work aside, Mr. Webb had two other qualities that i believe will make him an excellent clerk. First, he welcomed critique of his work and opportunities to improve. Second, Mr. Webb is just a personable and thoughtful young man who was always quick to thank me for spending time with him. In a nutshell, he was an ideal student.

Thank you for this opportunity to recommend an outstanding clerkship candidate. Please let me know if there are any additional questions that i can answer.

Sincerely,

Gregory F. Harley

Gregory Harley - gharley@burr.com

August 22, 2020

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige, Jr.
 U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

Dear Judge Hanes:

I am writing to strongly recommend Nolan Webb, Emory Law class of 2021, for a judicial clerkship. As the faculty advisor to the Moot Court Society, I've gotten to know Mr. Webb in several aspects of his leadership there. Mr. Webb is going to make a fantastic lawyer, and I think he will make an excellent judicial clerk as well.

Mr. Webb has already achieved a difficult task, which is to transfer into a new law school as a 2L and then make his way not only as a student but as a student-leader. Mr. Webb tried out for the Moot Court Society as a transfer in August 2019. This is an extra difficult process for transfers because they have to write and argue a new problem on a short time frame when they are moving to Atlanta and otherwise acclimating to a new law-school community. Mr. Webb excelled in the transfer competition and was offered one of a small handful of spots to round out this year's Moot Court Society. The fact that his writing and advocacy stood out at this hectic time in his own life is a testament to his ability to handle demanding legal work.

Once he was assigned to a competition team, Mr. Webb, like every other moot court competitor in the country, began to prepare, only to experience unprecedented disruptions in the competition season due to coronavirus. I was so impressed by how Mr. Webb has handled the effects on his team. His team was scheduled to compete in Brooklyn in mid-March. His team had a difficult situation because other New York competitions were canceling but his competition waited until the last minute. Mr. Webb had a teammate who was terrified to travel, but he desperately wanted to travel and compete. Managing his own personal mindset of taking the risk to travel in order to gain the competitive experience, Mr. Webb was respectful and tolerant of his teammate's very different mindset toward the evolving situation. Ultimately the competition did cancel, so the decision was made for them.

Mr. Webb regrouped and has shared his goal of competing in the fall of 2020, as a 3L. He is leading the group of rising 3Ls working on this opportunity. In large part because of Mr. Webb's own outstanding motivation, I am working with our administration during a challenging budget environment to find extra funds for some additional competition opportunities. In writing about Mr. Webb's motivation and strong desire to compete, I want to make clear that he is an incredibly collegial and easy-going guy in person. That is part of his promise and potential as a lawyer.

In February 2020, Mr. Webb was one of the students who met with me expressing their goal of running for a leadership position with the Moot Court Society's Executive Board. He was specifically interested in the Director of Finance role, so I described the structure of our funding and the important role the students play in fiscal responsibility with the travel budget. He immediately recognized the concept as "stewardship." The student society members elected him to this role on the Moot Court Society Executive Board for 2020-2021.

As a future Board member, Mr. Webb immediately embraced the responsibilities of leadership. We had arranged a weekend "retreat" for the Georgia Intrastate moot court team to Savannah Georgia, hosted by the law firm of Bouhan Falligant. Mr. Webb was not on this team, but one of those team members was unable to travel to the retreat, so Mr. Webb stepped up and took her place. The retreat was a fantastic experience thanks especially to the programming offered by the Bouhan Falligant lawyers, a Chatham Superior judge, and several federal law clerks. Mr. Webb made a positive impact within this group even though he was relatively new to the group. He asked good substantive questions during the practice moot, and his social skills were off-the-charts strong.

Beyond these leadership and interpersonal skills, Mr. Webb is a strong legal writer. His moot court brief from this year demonstrates his skill and potential as a judicial clerk. Mr. Webb's issue to research and argue was whether a work created at least in part by an artificial intelligence algorithm could be copyrightable. As he wrote in the brief quoting the First Circuit, "Applying copyright law to computer programs is like assembling a jigsaw puzzle whose pieces do not quite fit." Yet Mr. Webb did an excellent job combining a variety of sources to make a fundamentally strong legal argument based in the Constitution, Copyright Act, and case law, with creative supplementation by secondary sources.

For all these reasons, I strongly recommend Nolan Webb for a judicial clerkship. His combined strengths in leadership, communication, and research and writing will allow him to make an excellent contribution to judicial chambers.

Respectfully,

Jennifer Romig - jromig@law.emory.edu

Jennifer Murphy Romig

Jennifer Romig - jromig@law.emory.edu

IN THE SUPREME COURT OF THE UNITED STATES

Taylor JOHNSON,
Director of City of Emory
Department of Corrections
PETITIONER,

v.

Casey WILSON,
RESPONDENT.

ON A WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEETH CIRCUIT

Statement of the issue

Whether denying previously prescribed hormone therapy treatment to an incarcerated individual who suffers from Gender Dysphoria constituted a violation of the Eighth Amendment's prohibition on cruel and unusual punishment in modern times.

Statement of the Facts

Ms. Casey Wilson began receiving hormone therapy treatment in July of 2013 for her affliction of Gender Dysphoria (GD or GID). R. at 15. After receiving treatment and showing positive signs, she was incarcerated at the City of Emory's Department of Corrections (Emory DOC) for using marijuana. R. at 15.

Following her admittance, she was denied the continuance of her hormone therapy treatment by Dr. John Martin of Emory DOC. R. at 17. Dr. Martin, following Emory DOC guidelines, discontinued Ms. Wilson's treatment because she did not present enough of an indication that she was likely to commit suicide or self-mutilate. R. at 17. Dr. Martin does note that Ms. Wilson indicated an interest in self-harm, but dismissed the possibility of suicide or self-mutilation and therefore did not recommend hormone therapy treatments to continue. R. at 18.

Ms. Wilson is now challenging the constitutionality of this Emory DOC policy as a violation of her Eighth Amendment rights.

Summary of the Argument

The policy to only permit hormone therapy treatment to individuals who suffer from GD when they are near suicide or self-mutilation fails modern standards of decency. In 2019, we know more about GD than ever before and we understand with scientific precision that hormone therapy treatment can be beneficial to patients. Ms. Wilson benefited from this treatment according to her physician and when it was discontinued in the insincere name of her security, she was treated with deliberate indifference in a cruel and unusual way.

Argument

The City of Emory Department of Correction's discontinuance of Ms. Wilson's hormone therapy is a violation of the Eighth Amendment due to evolving standards of decency and Supreme Court jurisprudence. The seminal case regarding violations of the Eighth Amendment to prisoners is *Estelle v. Gamble*, 429 U.S. 97 (1976). In *Estelle*, the court proffered a two-prong test for identifying violations: (1) the medical need must be "serious" and (2) the prison administrators must show "deliberate indifference" to that need. See *Estelle* at 104. The petitioners have admitted that Ms. Wilson's GD constituted a serious medical need. R. at 5. The only question remaining is whether the

actions of the prison administrators constitute deliberate indifference per modern American jurisprudence.

Failing to provide hormone therapy treatment to Ms. Wilson constitutes deliberate indifference because the treatment of antidepressants for Ms. Wilson's GD does not meet evolving standards of decency and modern medical science. In *Trop v. Dulles*, the Supreme Court defined the parameters of the Eighth Amendment as dynamic. *See Trop v. Dulles*, 356 U.S. 86, 100 (1958). In *Trop*, a military veteran, who was dishonorably discharged for desertion, had his application for a U.S. Passport denied in accordance with then-valid federal penal statute. The Court in *Trop* deemed this "denationalization" to be a violation of the Eighth Amendment because of "evolving standards of decency." *See Trop* at 100. The Court was clarion in outlining the fluid nature of these violations by tying the egregiousness of the punishment with the views of society,

"There may be no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society... This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress."

Id. at 101. This passage shows that the meaning of “cruel and unusual” is tied to the societal norms of the time and place. No punishment is made in a vacuum and observing the punishment within the context of societal standards is critical to understanding its nature as cruel or unusual. In the present case, society, via scientific discovery, has a greater understanding of GD and the appropriate treatment for those who suffer from it and thus denying proper treatment to afflicted individuals until they seriously or fatally harm themselves, does not fit societal norms.

In *Kosilek v. Spencer*, the First Circuit Court of Appeals noted that the Supreme Judicial Court of Massachusetts, answering a case from 1992, felt that “supportive therapy” was insufficient in treating an individual who suffered from GID (GD). *See Kosilek v. Spencer*, 774 F.3d 63, 69 (2014).

In the present case, Ms. Wilson was prescribed treatment by Dr. Emma Galen prior to Ms. Wilson’s incarceration. R. at 15. This treatment included hormone therapy and Dr. Galen noted that the treatment was helping Ms. Wilson’s affliction of GD, noting, “...after these prescriptions were given, I observed noticeable favorable changes in Casey’s mental health.” R. at 15. Hormone therapy treatment is intended to have long-term positive impacts for those suffering with GD. The process of hormone therapy is

generally seen as spanning multiple years in order to best serve the patient. Stopping the hormone therapy can have negative impacts on the patient's well-being.

After her incarceration, Dr. John Martin, of Emory's Department of Corrections, recommended that Ms. Wilson discontinue her hormone treatments. He reasoned that the treatment was not warranted per Emory DOC guidelines because she was not harming herself via attempted suicide or self-mutilation. This is a standard of a time long-passed. It is unconscionable to wait to treat someone for their psychological affliction until they have attempted to self-mutilate or kill themselves. This, in modern times, is cruel and unusual per our evolving standards of decency and the code that permits and encourages this should be scrapped.

Additionally, Dr. Martin reasoned that if Ms. Wilson appeared feminine, she might be subjected to danger from her fellow inmates. This logic is supported by the Court in *Kosilek*, but only when the concern was sincere. *Kosilek* at 93. The *Kosilek* Court reviewed and heard testimony from numerous sources indicating to ensure that the concern for security was sincere and found it was given Ms. Kosilek's request for Sexual Reassignment Surgery.

In Ms. Wilson's case however, Emory DOC's guidelines state no issues with preferred pronouns being used or with cross-dressing. Both of these requests would produce the same safety concerns that Dr. Martin listed in his report of appearing more feminine in a masculine environment. Promoting the allowance of cross-dressing as treatment and rejecting hormone therapy on the grounds that a more feminine appearance is a safety concern are not compatible positions and demonstrate the insincerity of Emory DOC towards Ms. Wilson.

Further, in *Kosilek*, the prison was concerned, due to the patient's past violence against women, that moving Ms. Kosilek to a female prison was unwise per safety issues. *Kosilek* at 93. There is no such issue here. Ms. Wilson has no past history of violence and the solution of moving her to a female prison is thus a completely viable alternative to avoid the security concerns mentioned. Therefore, it is clear that the concern is not sincere enough to warrant a discontinuance of Ms. Wilson's treatment and doing so is a violation of her rights.

Conclusion

For the forgoing reasons, the petitioner respectfully requests this Court to uphold the ruling of the Court of Appeals.

SUBMITTED BY /s/ M. Nolan Webb ON August 11, 2019.

Applicant Details

First Name **Austin**
 Middle Initial **L.**
 Last Name **Webbert**
 Citizenship Status **U. S. Citizen**
 Email Address austinwebbert@gmail.com

Address
Address
Street
1110 Key Highway, Unit 828
City
Baltimore
State/Territory
Maryland
Zip
21230
Country
United States

Contact Phone Number **7868630345**

Applicant Education

BA/BS From **University of Miami**
 Date of BA/BS **May 2010**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 5, 2017**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Journal of Race and Law**
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia, Maine, Maryland**

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Marcuse, Deborah
dmarcuse@sanfordheisler.com
410-834-7415
Cooper, Ed
coopere@umich.edu
734-764-4347
Mortenson, Julian
jdmorten@umich.edu
734-763-5695

References

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Firm Managing Partner and Baltimore Managing Partner
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111 S. Calvert Street, Suite 1950
Baltimore, MD 21202
(email) dmarcuse@sanfordheisler.com
(phone) (410) 834-7415

Julian Davis Mortenson
Professor of Law
University of Michigan Law School
625 South State Street,
Ann Arbor, Michigan 48109
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(phone) (734) 763-5695

Edward H. Cooper
Professor Emeritus of Law
University of Michigan Law School

625 South State Street,
Ann Arbor, Michigan 48109
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

AUSTIN L. WEBBERT

1110 KEY HIGHWAY, UNIT 828, BALTIMORE, MD 21230 • (786) 863-0345 • AUSTINWEBBERT@GMAIL.COM

April 30, 2022

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige, Jr. U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a 2017 graduate from the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for the 2022-2023 term. As a public interest litigator, I hope to further develop my research, advocacy, and writing skills through a federal court clerkship. I believe that my background and experiences would allow me to excel as one of your clerks.

As an attorney at Sanford Heisler Sharp, LLP, I have refined my research and writing skills by spearheading the drafting of various legal briefs and collaborating with my colleagues on many others. Among these experiences, I have taken lead roles in prosecuting a successful appeal before the U.S. Court of Appeals for the D.C. Circuit that reversed a defendant's dismissal on personal jurisdictional grounds, defeating a motion for judgment on the pleadings concerning class-wide, disparate-impact liability for employment discrimination, and defeating a motion for summary judgment concerning an individual's claims of employment discrimination.

I have enclosed my resume, law school transcript, and writing sample for your review. Also included are letters of recommendation from:

- Firm Managing Partner and Baltimore Managing Partner at Sanford Heisler Sharp, LLP, Deborah K. Marcuse (dmarcuse@sanfordheisler.com);
- University of Michigan Professor, Julian D. Mortenson (jdmorten@umich.edu); and
- University of Michigan Professor Emeritus, Edward H. Cooper (coopere@umich.edu).

Thank you for your time and consideration.

Sincerely,



Austin L. Webbert

Attachments

AUSTIN L. WEBBERT

1110 KEY HIGHWAY, UNIT 828, BALTIMORE, MD 21230 • (786) 863-0345 • AUSTINWEBBERT@GMAIL.COM

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI

J.D. May 2017 – GPA: 3.564

Honors: *Dean's Scholarship* (Merit); *Equal Justice America Fellowship* (Summer 2016)

Activities: *Associate Editor* (2015–16) & *Executive Editor* (2016–17), Michigan Journal of Race and Law

Student Attorney, Environmental Law Clinic and Unemployment Insurance Clinic

Publications: “Comment: Limited Voir Dire: An Inadequate Safeguard of the Constitutional Right to an Impartial Jury,” Michigan Journal of Race and Law, Jan. 22, 2016

“Class Actions Under Rule 23 and Collective Actions Under the Fair Labor Standards Act: Preventing the Conflation of Two Distinct Tools to Enforce the Wage Laws,” 23 Georgetown Journal on Poverty Law and Policy 233, Winter 2016 (co-authored with William C. Jhaveri-Weeks) (cited in *Scott v. Chipotle Mexican Grill, Inc.*, 954 F.3d 502, 518 (2d Cir. 2020))

UNIVERSITY OF MIAMI, Coral Gables, FL

B.A. Latin American Studies with History minor, *cum laude*, May 2010 – GPA: 3.797

Honors: Robert F. Levine Award for Excellence in Latin American Studies; General Honors from the Honors Program; Co-author of Article in Peer-reviewed Journal

Activities: Founded a Student Organization to Advance Educational Opportunity in Haiti

EXPERIENCE

SANFORD HEISLER SHARP, LLP, Baltimore, MD

Associate, Sept. 2019 – present; *Litigation Fellow*, Sept. 2018 – Sept. 2019

- Work on individual, collective-action, and class-action cases in state and federal court
- Handle all aspects of public interest litigation, including intakes, administrative filings, motion practice, written discovery, depositions, settlement negotiations, and appeals
- Research and draft briefs, including the opening brief and reply in a federal appeal, oppositions to a motion to dismiss and a motion for summary judgment, a reply supporting a motion for plaintiffs' use of pseudonyms, and portions of an opposition to a motion to dismiss, oppositions to motions for summary judgment and motions for judgment on the pleadings, motions and replies in support of class certification, a motion for preliminary injunction and temporary restraining order, an opposition to a motion to decertify a collective action, and a response brief in a federal appeal
- Supervise legal assistants and litigation fellows in case-related tasks and assist with training and onboarding

LAND OF LINCOLN LEGAL ASSISTANCE FOUNDATION, Champaign, IL

Equal Justice Works Americorps Legal Fellow, Oct. 2017 – Aug. 2018

- Represented low-income veterans in civil matters, primarily in housing, consumer, and family law

JOHNSON WEBBERT & YOUNG LLP, Augusta, ME

Law Clerk, April 2017 – Aug. 2017; Aug. 2016; Dec. 2015 – Jan. 2016

- Conducted research on diverse issues in complex workers' and civil rights litigation

UNIVERSITY OF MICHIGAN LAW SCHOOL CIVIL-CRIMINAL LITIGATION CLINIC, Ann Arbor, MI
Equal Justice America Fellow and Student Attorney, May 2016 – July 2016

- Represented low-income clients in civil matters, including debt-collection and landlord-tenant disputes

GOLDSTEIN, BORGEN, DARDARIAN & HO, Oakland, CA
Summer Associate, May 2015 – July 2015

- Conducted research on diverse issues in complex workers' and civil rights litigation

WILMER CUTLER PICKERING HALE AND DORR LLP, Washington, DC
Project Assistant, Oct. 2012 – Aug. 2014

- Managed case information and assisted attorneys with government investigations, complex litigation, and appeals

ADDITIONAL

- Admitted to practice in the District of Columbia, Maine, Maryland, the Federal District Court for the District of Maryland, the Federal District Court for the District of Columbia, and the U.S. Court of Appeals for the D.C. Circuit; proficient in Spanish; Latin American culture and travel enthusiast



Transcripts, Certification and Diploma Department

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Ann Arbor, MI 48109-1382
Phone: 734-763-9066 Fax: 734-764-5556
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University of Michigan Statement of Authenticity

Transcript of: Austin L Webbert

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Issue Date: 07/19/2017

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Webbert, Austin L

Degree Conferred: JD

Student#: 20725998

Date Conferred: May 04, 2017



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2014 (September 02, 2014 To December 19, 2014)								
LAW	510	002	Civil Procedure	Edward Cooper	4.00	4.00	4.00	A-
LAW	530	001	Criminal Law	David Moran	4.00	4.00	4.00	A-
LAW	560	003	Property	William Miller	4.00	4.00	4.00	A
LAW	590	005	Legal Practice I	Margaret Cernak	2.00		2.00	S
LAW	592	005	Legal Practice Skills	Margaret Cernak	1.00		1.00	S
Term Total				GPA: 3.800	15.00	12.00	15.00	
Cumulative Total				GPA: 3.800		12.00	15.00	
Winter 2015 (January 14, 2015 To April 22, 2015)								
LAW	520	002	Contracts	Veronica Santarosa	4.00	4.00	4.00	B+
LAW	569	002	Legislation and Regulation	Julian Davis Mortenson	4.00	4.00	4.00	A-
LAW	580	001	Torts	Scott Hershovitz	4.00	4.00	4.00	B-
LAW	591	005	Legal Practice II	Margaret Cernak	2.00		2.00	S
LAW	974	001	Unemployment Insurance Clnc I	Steve Gray	2.00		2.00	S
Term Total				GPA: 3.233	16.00	12.00	16.00	
Cumulative Total				GPA: 3.516		24.00	31.00	

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Issue Date: 07/19/2017

Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Webbert, Austin L

Degree Conferred: JD

Student#: 20725998

Date Conferred: May 04, 2017



Paul R. Rosen
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2015 (August 31, 2015 To December 18, 2015)								
LAW	544	001	Narrative Skills and the Law	Marshall Goldberg	3.00	3.00	3.00	A-
LAW	606	001	Transnational Law	Kristina Daugirdas	3.00	3.00	3.00	B+
LAW	657	001	Enterprise Organization	Laura Beny	4.00	4.00	4.00	A-
LAW	675	001	Federal Antitrust	Daniel Crane	3.00		3.00	P
LAW	736	001	Consumer Class Actions	Stuart Rossman	1.00	1.00	1.00	A
LAW	885	006	Mini-Seminar	Martha S. Jones	1.00		1.00	S
			Outsiders: Memoir & the Fault Lines of Identity	Julian Davis Mortenson				
Term Total				GPA: 3.618	15.00	11.00	15.00	
Cumulative Total				GPA: 3.548		35.00	46.00	
Winter 2016 (January 13, 2016 To May 05, 2016)								
LAW	540	002	Introduction to Constitutional Law	Julian Davis Mortenson	4.00	4.00	4.00	A
LAW	597	001	Civ Rights & Const Litigation	Samuel Bagenstos	3.00	3.00	3.00	A-
LAW	653	001	Employment Discrimination	Samuel Bagenstos	3.00	3.00	3.00	B+
LAW	693	001	Jurisdiction and Choice Of Law	Mathias Reimann	4.00		4.00	P
Term Total				GPA: 3.700	14.00	10.00	14.00	
Cumulative Total				GPA: 3.582		45.00	60.00	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Webbert, Austin L

Degree Conferred: JD

Student#: 20725998

Date Conferred: May 04, 2017



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2016 (August 29, 2016 To December 16, 2016)								
LAW	677	001	Federal Courts	Chris Whitman	4.00	4.00	4.00	B
LAW	731	001	Legal Ethics and Professional Responsibility	Robert Hirshon	2.00	2.00	2.00	B+
LAW	764	001	Workplace Law & Policy Advoc	Kate Andrias	2.00	2.00	2.00	A-
				Samuel Bagenstos				
LAW	930	001	Environmental Law Clinic	Neil Kagan	5.00	5.00	5.00	A
				Nancy Wang				
Term Total				GPA: 3.538	13.00	13.00	13.00	
Cumulative Total				GPA: 3.572		58.00	73.00	
Winter 2017 (January 11, 2017 To May 04, 2017)								
LAW	669	001	Evidence	Leonard Niehoff	4.00	4.00	4.00	B
LAW	708	001	Owning It: Rio and Detroit	Anne Choike	3.00	3.00	3.00	A-
				Anna Sirota				
LAW	753	001	Trial Practice	Timothy Connors	3.00	3.00	3.00	B+
LAW	900	375	Research	Steve Gray	1.00	1.00	1.00	A
LAW	975	001	Unemployment Insurance Clns II	Steve Gray	4.00	4.00	4.00	A
				Samir Hanna				
Term Total				GPA: 3.533	15.00	15.00	15.00	
Cumulative Total				GPA: 3.564		73.00	88.00	

End of Transcript
Total Number of Pages 3

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

- P Pass when student has elected the limited grade option.*
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- T Mandatory pass when student is transferring to U of M Law School.
- I Incomplete
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

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Any questions concerning this transcript should be addressed to:

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University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499



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New York | Washington D.C. | San Francisco | San Diego | Nashville | Baltimore

March 17, 2021

VIA OSCAR

Re: Clerkship Candidate Austin L. Webbert

Dear Judge,

For lack of a clerkship, my associate, Austin Webbert, decided last year to fashion his own. Working with minimal oversight, he mastered the unfamiliar details of appellate practice and the nuances of a longstanding inconsistency in the law—the fiduciary shield doctrine—which also deeply offended his sense of justice. Working tirelessly through the winter holidays, with only a modicum of support from a legal assistant and another young associate, Austin generated two impressive briefs that successfully convinced the D.C. Circuit to adopt our plaintiff’s position on the papers alone. *See Urquhart-Bradley v. Cushman & Wakefield, Inc.*, 2019 WL 2526392 (D.D.C. June 19, 2019).

As the Managing Partner of Sanford Heisler Sharp’s Baltimore office, I have the good fortune to work at a firm populated by star performers from top-tier law schools who are drawn to our demanding practice by their strong commitments to social justice and public interest work. It is, in short, a tough place to stand out as a young lawyer. Yet, of the many impressive associates with whom I have worked in my 13 years of legal practice, there is no one I would recommend for a clerkship with more enthusiasm than Austin.

Based on my close and sustained work with Austin since he became our very first Baltimore associate in Fall 2018, I believe that he has an exceptional aptitude for the very particular sort of work required of a judicial clerk. His lively intellectual curiosity, his painstaking attention to detail in research and writing, his capacity to productively absorb constructive feedback (formerly known as criticism), and his relentlessly dedicated work ethic will, I am confident, contribute significantly both to your work and the work of his colleagues, now and well into the future.

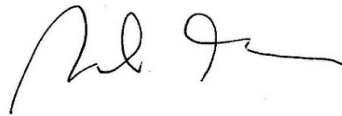
I have been particularly impressed by Austin’s ability and willingness to learn from his peers, a characteristic that I do not always observe in ambitious young associates. With one particularly thorny assignment in 2019, Austin made his first foray into class action litigation by taking on the defense of our class claims in a high profile and complicated employment discrimination case. Austin struggled to master a byzantine area of law under the supervision of a partner who was too busy to articulate much more than his disappointment with imperfect results. At my suggestion, after a frustrating first round, Austin reached out to an associate in another office who is only a year his senior, seeking her guidance on both substance and process. The first draft of his next project, which I received late one night some weeks later, was a revelation. Beautifully written and tightly argued, it took its place in our motion with almost no editing and ultimately prevailed before the court on the same complex class issue.

Letter of Recommendation for Austin L. Webbert
March 17, 2021
Page 2 of 2

I often say to clients, only half joking, that litigation is fun for lawyers (mostly), but not so much for human beings. In fact, however, my assessment of lawyers with whom I work, and particularly those I supervise, rises and falls above all else on their kindness as human beings. This is not an attribute typically prioritized by top law schools or firms, or even judges, but it ought to be, and by this measure, too, Austin stands out. His desire to do good for others gives life to his interest in the law; his enthusiasm for its intricate details is more than academic or technocratic, and he shares that enthusiasm generously with his colleagues. I am confident that Austin's dedication to the letter and the spirit of the law will enliven and enrich your opinions and your chambers both.

I recommend Austin without reservation and would be delighted to discuss his candidacy further. Please contact me by phone at (410) 834-7415 or via email at dmarcuse@sanfordheisler.com if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah K. Marcuse', with a stylized, flowing script.

Deborah K. Marcuse

MICHIGAN LAW

Edward H. Cooper
Thomas M. Cooley Professor of Law

coopere@umich.edu

April 30, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

RE: AUSTIN L. WEBBERT

It is a pleasure to provide my strong support for Austin Webbert's application for selection as your clerk. He will be a good clerk, fully up to the many and diverse requirements of the position.

Mr. Webbert was a student in my Civil Procedure course. It was a "small" section of 42 students. And, as it happened, a good section. The purpose of having small sections is to encourage class participation, not only by doubling the frequency of command performances, but also by encouraging voluntary participation that in turn rather reduces the frequency of command performances. A lucky draw of students advances the purpose. So it was that fall. Mr. Webbert was an active and good participant in class discussions. I came to think well of him, and to expect a good examination performance.

At the end of the course, Mr. Webbert wrote an A- examination. In our system as it is, after periodic revisions, the A- remains a grade of real distinction. It represents command of the subject matter, and not simply in the sense of understanding what has been taught and absorbed through independent study and reflection. It shows understanding of the reasons for the law as it is (more or less approximately) at the moment, of the reasons why the law as it is may have room for improvement at the margins without explicit amendment of rule or statute. And, most important, it demonstrates the ability to bring these understandings to bear in solving questions somewhat like, but also somewhat unlike, anything encountered in the course. We continue to have an outstanding group of students. Performance in the top reaches of the class reflects legal abilities fully equal to all the demands faced by a judicial clerk.

I have visited with Mr. Webbert outside the classroom. He is a lawyer's child, and comes to the law with understanding and enthusiasm. He also seems well grounded. He will work well in the office. He deserves to be selected.

If you wish to speak with me directly, please do not hesitate to email me at coopere@umich.edu.

Very truly yours,

Edward H. Cooper

Ed Cooper - coopere@umich.edu - 734-764-4347

MICHIGAN LAW
UNIVERSITY OF MICHIGAN
701 South State Street
Ann Arbor, MI 48109-3091

JULIAN DAVIS MORTENSON
James G. Phillipp Professor of Law

May 04, 2022

The Honorable Elizabeth Hanes

Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend my student Austin Webbert for a clerkship in your chambers. He is a bright, earnest, and dedicated young lawyer who would be a pleasure to work with. His strong writing skills and his background as a paralegal at WilmerHale, combined with new work experience as a lawyer, mean that he will start much more prepared for the position than many law students. And his positive attitude and unassuming air will make him a good colleague in chambers. I hope you will give his application serious consideration.

I had Austin in three classes: a first-year Legislation & Regulation class in Winter 2015, a second-year Constitutional Law class in Winter 2016, and a small ungraded seminar in which we read memoirs by different kinds of "outsiders." Austin was a pleasure to have in all three classes. One of the first things to strike me about him was a notable earnestness about figuring out the right answer to questions. He never resorted to easy cynicism about law's indeterminacy, or the politicization of doctrine; he always took his best shot at answering the problem or question he was confronted with on its own terms. Beyond taking the project of discussion seriously, though, what was additionally notable was how important it seemed to him to get it right for its own sake. He has the kind of mind that is interested in fixing problems, solving puzzles, and resolving inconsistencies in a satisfying way.

His written work for me was very strong. Particularly exceptional was his work on a major question in my 2016 Constitutional Law final which dealt with a Youngstown Zone 3 clash between Congress and the President over moving detainees from Guantanamo Bay to Kansas. Austin broke down the question with almost machine-like precision; explored the details with gusto; and scored the highest in the class on the question (which was worth 50% of the points on the exam). It was genuinely outstanding work. I've seen the same quality of writing in the other materials I've seen by him, including his case comment in the Michigan Journal of Race and Law. He has a plain, straightforward writing style that conveys meaning and analytics without belaboring the point or engaging in rhetorical excess. It's very well suited to legal writing.

At a personal level, Austin will be a good team player and more generally a pleasure to work with in chambers. He was an extremely positive contributor in the small seminar, not just in the sense of saying useful and interesting things, but also in the sense of helping with the overall "mood" of the gathering—its openness; the constructiveness of the conversation; the sense of respect for other people and the value of their contributions. I have every reason to expect he would bring that same dynamic to bear in the clerkship environment.

In terms of his long-run goals, Austin has historically been most drawn to public interest litigation, particularly civil rights, consumer rights, and workers' rights. He describes with relish how working at the Unemployment Insurance Clinic confirmed his interest in providing direct legal services to people in poverty, whether from developing his advocacy skills, to working one-on-one with clients, to the simple challenges of juggling a caseload with classes. His summer jobs during law school—at a class action civil rights firm in Oakland, CA, and then at the Civil-Criminal Litigation Clinic here in Ann Arbor—only further confirmed that interest. This all builds on the example of his father, who practices plaintiff-side employment and civil rights law in Maine; Austin grew up seeing his father use his legal skills to help people, often at their most vulnerable moments, in ways that they couldn't replicate elsewhere. That model continues to loom large as Austin thinks through his career plans now.

Austin is a bright, personable, and promising young lawyer. I hope you'll give his application serious consideration; I think he'd be a great law clerk. Please don't hesitate to let me know if there's any further help I can offer in evaluating his application.

Best regards,

Julian Davis Mortenson
James G. Phillipp Professor of Law
Michigan Law School

Julian Mortenson - jdmorten@umich.edu - 734-763-5695

Austin L. Webbert – Writing Sample

The following writing sample is an edited excerpt of the opening brief in an appeal before the U.S. Court of Appeals for the D.C. Circuit, *Urquhart-Bradley v. Mobley*, No. 19-7116. Please note that this sample is primarily my own work product with light edits contributed by other case team members. My employer, Sanford Heisler Sharp, LLP, has granted me permission to use this document as a writing sample.

SUMMARY OF ARGUMENT

I.A. Relying on the so-called “corporate shield” or “fiduciary shield” as a constitutional theory, the district court insulated CEO Mobley from personal jurisdiction in the District based on any D.C.-related contacts “within his corporate responsibilities.” But, over twenty-five year ago, the U.S. Supreme Court rejected this theory in two landmark cases: *Calder v. Jones*¹ and *Keeton v. Hustler Magazine Inc.*² Many courts have since recognized that the fiduciary shield concept has no necessary connection to minimum-contacts analysis under the Due Process Clause; rather, it subsists only as a state-law matter. This Court should conform Circuit law with these precedents and clarify that federal due process does not provide a talismanic shield for corporate employees.

As for District law, the D.C. Court of Appeals has not adopted the fiduciary shield, and this Court should heed its forbearance by declining to graft the doctrine onto the District’s long-arm statute. Indeed, the D.C. Court of Appeals has emphasized that the long-arm statute’s “transacting any business” prong extends as far as the Due Process Clause. And three times now, the court has addressed the fiduciary shield under this statutory prong. Each time it applied only a federal due process analysis and distanced itself from the fiduciary shield concept.

Even if the D.C. Court of Appeals were to reverse course by adopting the fiduciary shield, CEO Mobley’s relevant contacts still fall into several existing

¹ 465 U.S. 783 (1984).

² 465 U.S. 770 (1984).

exceptions to the state-law doctrines. Thus, this Court can safely abstain from guessing whether D.C. might ever adopt the doctrine. Absent any fiduciary or corporate shields—whether under federal due process or District law—the Court may freely order the district court to exercise its personal jurisdiction over CEO Mobley.

B. CEO Mobley, an Illinois-based employee of C&W, subjected himself to specific personal jurisdiction in D.C. by overseeing C&W's D.C. office, where he personally fired Ms. Urquhart-Bradley, a member of his Executive Leadership. In targeting a D.C. employee with a discriminatory termination, CEO Mobley knew the brunt of its devastating impact would be felt by her in D.C. He also freely assumed his position with the Company, understanding that this would entail substantial and continuing contacts with C&W's D.C. office and employees there, including and especially Ms. Urquhart-Bradley as a member of his Executive Leadership. By accepting the benefits and responsibilities of overseeing a D.C. office, CEO Mobley purposefully availed himself of the privilege to conduct such suit-related activities in the District.

This Court and the Supreme Court have upheld jurisdiction as consistent with the Due Process Clause under like circumstances. Moreover, CEO Mobley lacks the rare, compelling case necessary to render such jurisdiction unreasonable. If anything, the strong public policy interests favoring enforcement of anti-discrimination laws would counsel a lower threshold for minimum contacts than would otherwise be required.

C. Just as the Due Process Clause authorizes jurisdiction over CEO Mobley, so does the District’s long-arm statute. Its “transacting any business” prong extends as far as federal due process and CEO Mobley literally transacted business in D.C. by overseeing a D.C. office that included a key member of his Executive Leadership team for the Americas. At an absolute minimum, as the district court recognized, CEO Mobley’s decision to personally terminate Ms. Urquhart-Bradley’s employment status in D.C. amounted to a business-related transaction there.

CEO Mobley’s D.C.-related contacts also satisfy the District long-arm statute’s prong for tortious injury in the District, caused by an outside act. Given that his suit-related contacts also satisfy the less restrictive standard for federal due process, this prong authorizes jurisdiction over CEO Mobley. For one, terminating Ms. Urquhart-Bradley’s employment in D.C. caused her an unquestionable injury there. Her factual proffer also permits a plausible inference that CEO Mobley executed and made his decision while outside D.C.

Beyond these elements, this long-arm prong requires a “plus factor,” tying CEO Mobley to the District. It can plausibly be inferred that he meets this requirement by regularly engaging in business contacts in D.C., including by overseeing C&W’s prominent office there, both prior to December 2017 as C&W’s regional President for the Eastern United States, and since that time as the Company’s CEO for the Americas.

II. The district court misapplied the burden for surviving a motion to dismiss in concluding that it lacked personal jurisdiction over CEO Mobley. At this early stage

of the case, where the court declined to hold an evidentiary hearing, Ms. Urquhart-Bradley only needed to proffer a plausible, *prima facie* showing of personal jurisdiction, which the court was obliged to construe in the light most favorable to the plaintiff, drawing all reasonable inferences in her favor. Yet the court set aside nearly all the proffered and substantial contacts that CEO Mobley engaged in with D.C. By telescoping the analysis onto one phone call in which CEO Mobley fired Ms. Urquhart-Bradley, the district court took too narrow a view of the relevant contacts. This requires reversal because—applying Rule 12(b)(2) correctly—Ms. Urquhart-Bradley’s factual proffer plausibly showed personal jurisdiction over CEO Mobley.

III. Finally, the district court abused its discretion by dismissing CEO Mobley without granting Ms. Urquhart-Bradley any opportunity to conduct jurisdictional discovery concerning his suit-related contacts with D.C. At a minimum, Ms. Urquhart-Bradley’s factual proffer demonstrated that the jurisdictional facts could be materially supplemented through discovery. If the Court finds that any factual insufficiency precludes personal jurisdiction over CEO Mobley and discoverable facts could shift the analysis, remand is required for additional discovery.

STANDARD OF REVIEW

The district court’s decision granting a motion to dismiss for lack of personal jurisdiction presents an issue of law that is reviewed *de novo*. *See, e.g., Estate of Klieman by & through Kesner v. Palestinian Auth.*, 923 F.3d 1115, 1123 (D.C. Cir. 2019). The district court’s decision declining to grant jurisdictional discovery is

reviewed for abuse of discretion. *Livnat v. Palestinian Auth.*, 851 F.3d 45, 57 (D.C. Cir. 2017).

ARGUMENT

I. **CEO Mobley subjected himself to personal jurisdiction in D.C. by overseeing a D.C. office, where he personally fired a member of his Executive Leadership.**

A. **The Supreme Court has long rejected any talismanic “shield,” insulating employees from personal jurisdiction based on acts “within their corporate responsibilities.”**

Although never invoked by name, the district court applied the so-called “corporate shield” or “fiduciary shield” theory, to insulate CEO Mobley from jurisdiction in D.C. based on acts “within his corporate responsibilities.” JA41. This jurisdictional immunity “maintains that even if a particular [non-resident] employee has substantial contacts with [a forum]—*e.g.*, the employee repeatedly traveled to [the forum] to promote the [employer’s] product—those contacts will not count against the employee in the personal jurisdiction analysis so long as the employee acted solely on the corporation’s behalf.” *Newsome v. Gallacher*, 722 F.3d 1257, 1275 (10th Cir. 2013). The U.S. Constitution admits of no such thing. Despite some confusion in the case law, “the Supreme Court has made clear that the fiduciary shield is a question of state law, not [federal] due process.” *Id.* at 1278 (Tymkovich, J.) (joined by then-Judge Neil M. Gorsuch). Here, Congress, the D.C. Council, and the D.C. Court of Appeals have not adopted the fiduciary shield as a matter of District law.

1. The Supreme Court has rejected the “corporate” or “fiduciary” shield as a component of minimum contacts analysis under the Due Process Clause.

Over twenty-five years ago, the Supreme Court rejected the fiduciary shield as a component of the Due Process Clause in *Calder v. Jones*, 465 U.S. 783 (1984), and *Keeton v. Hustler Magazine*, 465 U.S. 770 (1984). When the *Calder* defendants, a National Esquire editor (also its corporate president) and writer, “in essence, claim[ed] the protection of the fiduciary shield,” *Newsome*, 722 F.3d at 1276, the Court dismissed it and held: “[defendants’] status as employees does not somehow insulate them from jurisdiction.” *Calder*, 465 U.S. at 790. Then, in a footnote to address the naming of the publisher, editor, and owner of *Hustler Magazine* as an individual defendant in *Keeton*, the Court doubled down: “[W]e today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity Each defendant’s contacts with the forum State must be assessed individually.” *Keeton*, 465 U.S. at 781 n.13.

The next term, the Court reiterated that “the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473–74 (1985). A party once again suggested that federal due process should turn on “a general rule, or at least a presumption,” based on a defendant’s business activities. *Id.* at 485 n.28 (addressing “participation in an interstate franchise relationship”). Again, the Court underscored that it “reject[s] any talismanic jurisdictional formulas; the facts of each case must always be weighed,” *id.* at 485–85, and “few answers will be written in

black and white.” *Id.* at 486 n.29. This “approach does, of course, preclude clear-cut jurisdictional rules.” *Id.*

Consistent with these precedents, a great majority of courts regard the fiduciary shield as having “no necessary connection to the minimum contacts analysis”; if “exist[ing] at all, it must be a matter of state law.” *Newsome*, 722 F.3d at 1276; *Hardin Roller Corp. v. Universal Printing Mach., Inc.*, 236 F.3d 839, 842 (7th Cir. 2001) (“[*Calder* and *Keeton*] establish that the Constitution does not shield persons who act as corporate agents from individual-capacity suits. Thus, the fiduciary-shield doctrine is a matter of state law only, and many states do not employ it.”) (Easterbrook, J.); *McGowan Grain, Inc. v. Sanburg*, 225 Neb. 129, 145 (1987) (“Any thought that the fiduciary shield doctrine is a principle pertinent to personal jurisdiction received a constitutional coup de grace administered by the U.S. Supreme Court”); *cf. Walden v. Fiore*, 571 U.S. 277, 288 (2014) (analyzing a defendant police officer’s conduct as his own for purposes of minimum contacts and omitting any reference to a “shield” for such contacts); *id.* at 288 n.7 (noting that it had “rejected” an argument to deflect employees’ responsibility for wrongdoing onto their employer).³

³ See also *FlagHouse, Inc. v. ProSource Dev., Inc.*, 528 F. App’x 186, 189 (3d Cir. 2013) (unpublished); *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 177 (4th Cir. 2002); *Balance Dynamics Corp. v. Schmitt Indus., Inc.*, 204 F.3d 683, 698 (6th Cir. 2000); *Villa Marina Yacht Sales, Inc. v. Hatteras Yachts*, 915 F.2d 7, 9 (1st Cir. 1990); *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 521–522 (9th Cir. 1989); *Retail Software Servs., Inc. v. Lashlee*, 854 F.2d 18, 21–24 (2d Cir. 1988); *Williams Elec. Co. v. Honeywell, Inc.*, 854 F.2d 389, 392 (11th Cir. 1988); *Amerireach.com, LLC v. Walker*, 290 Ga. 261, 264–69 (2011), *as amended on denial of reconsideration* (Dec. 8, 2011).